# LAND PROBLEMS AND POLICIES

IN THE

# AFRICAN MANDATES OF THE BRITISH COMMONWEALTH

LOUISIANA STATE UNIVERSITY STUDIES No. 2

# LAND PROBLEMS AND POLICIES IN THE AFRICAN MANDATES OF THE BRITISH COMMONWEALTH

BY

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WITH FOREWORD BY

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# LOUISIANA STATE UNIVERSITY STUDIES

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No. I THE COMMUNITY PROPERTY SYSTEM OF LOUISIANA WITH COMPARATIVE STUDIES

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No. III THE RECOGNITION POLICY OF THE UNITED STATES SINCE 1901. FIRST EDITION 1928. NEW AND REVISED EDITION 1931.

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TO MY MOTHER AND FATHER

With Love and Appreciation

# PREFACE

In making this study of the land problem in the African mandates of the British Commonwealth, I have been particularly impressed with the vast field for research which the development of the mandates system has opened to the student of international relations. For example, there arise the interesting questions of the relation of administration under this plan to inter-racial conflicts, industrial development, and other matters of social, political, or economic importance. I hope that in the near future I may be privileged to undertake a more comprehensive discussion of some other phase of these important problems.

A word of explanation is perhaps necessary regarding the use of the term "British Commonwealth" in this volume.

There is no other expression which gives quite the meaning that is desired. The fact that two Mandatory Powers, Great Britain proper and the Union of South Africa, are involved in the administration of the four mandates considered precludes the employment of the term "British." Nor does "British Empire" carry quite the connotation which is necessary. It will be seen, therefore, that "British Commonwealth" is the only term which is at all satisfactory.

I wish to express my appreciation of the advice and encouragement which have been given me during the preparation of this volume. Special thanks are due to Professors Charles A. Timm, O. Douglas Weeks, and Nina Lee Weisinger, of the University of Texas; to Professor Charles W. Pipkin, of Louisiana State University, whose friendly interest has made the publication of this work possible; and to my wife, whose aid in the preparation of maps and in the revision of the book, has been invaluable.

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*February 7, 1931.*

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# FOREWORD

International co-operation is to-day a recognized necessity among all nations. The forms that it may take vary, but the essentials of compromise, persuasion and debate are part of the daily work of every government of the world in its dealings with all other governments. Any freedom in this century for the United States and for all the world is to be found only in co-operation. The organization of peace is a duty which the modern democratic nation cannot escape without serious consequences to the peace of the world and to the security of the nation itself. It is in this organization of peace that the citizens of the United States are taking an increased interest, and it is in the results of this international co-operation that they see a larger security for their nation. The other way is national suicide and international anarchy. Those who are serving most wisely their own country and the future peace of mankind are patiently trying to strengthen the institutions of common understanding among men. It is in the way of understanding that the new economics and the new politics of the United States, of Europe and of the world are finding fresh means of expression.

There is perhaps no fact in the development of international co-operation since the war which is more significant of the new machinery of conference and publicity and consultation at Geneva than the growth of the international administration of the mandated areas under the supervision of the League of Nations. The lessons which are being learned by the nations of the world in the use of this machinery with regard to the colonial regions are among the achievements of the new order which was inaugurated when the Covenant of the League of Nations was accepted. It is the beginning of a new international policy of trusteeship as opposed to exploitation, and also there is being developed a system of administration in international government. These two facts illustrate the difference between the old order of colonial government before the years of the war and the established system of control through international agencies which was set up by the League of Nations. A new philosophy of international relations is the result.

The Covenant of the League of Nations in Article 22 defines the principle of the Mandates System and the organization of this new international control of one of the major problems of world politics. The idealism of Woodrow Wilson and the suggestion of General Smuts with reference to certain detached European areas—that they might be entrusted to States who should be responsible for the conduct of their administration to the League of Nations—were the sources of the mandatory system. The language of the first paragraph of the article dealing with mandates is worth recording here. It is: "To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in the Covenant." Here indeed was something new in wars and in peace making! In spite of a bitter and shabby peace there was talk of "a sacred trust of civilization," and in time this may be all that is remembered about the peace.

The test of the capacity of modern democratic nations to accept the well-being and development of peoples as "a sacred trust of civilization" is in the successful administration of the system of mandates which was provided for in the Covenant of the League of Nations. The practical aspect of the mandates system is of great importance because it can be a most effective instrument in creating the conditions of good-will and justice which will help to maintain the peace of the world. For this reason the history and the working of the mandates system is of interest to every nation and is an important part of the machinery of international conference at Geneva. And in the working out of this great experiment in colonial government and in international co-operation the people of the United States must feel a keen sympathy. This nation had an important part in the shaping of the international policy with regard to mandates through the leadership of President Wilson, who had, as President Edwin A. Alderman of the University of Virginia said, "the heart to match the moral hopes of mankind against their passions." This is a noble saying about Woodrow Wilson, and the truth of it becomes plainer as men attempt "to substitute for the arbitrament

of war and death the reign of law." The validity of democratic ideals and institutions throughout the world have a meaning for the authority of such principles in this country, and the success of the mandates system must always be watched with the keenest interest in the United States.

The best method of giving practical effect to the principle of international trusteeship was declared by the Covenant to be that "the tutelage of such peoples should be entrusted to advanced nations who, by reason of their resources, their experience or their geographical position, can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League." Thus was embodied the principle of international responsibility and there was begun the new experiment of administering colonial areas with reference to the well-being and development of the peoples concerned and under the supervision of an international authority. Here was something new in world affairs.

There were fourteen different mandated territories, divided into three groups. There were the Class A Mandates in the Near East, the Class B Mandates in Africa, and the Class C Mandates in the Pacific and Africa. The total area of the mandated territory is 1,244,000 square miles, the population is approximately 18,000,000, and the annual trade is nearly $200,000,000. The future importance is of course difficult to forecast, but the future of the mandated areas is closely connected with the peace of the world. The significance of this able study by Mr. Mitchell lies in the fact that he presents concrete evidence on one of the most important administrative problems arising in the mandates, rather than merely acknowledging that such a problem exists. It is an attempt made with care and understanding to consolidate material from many scattered sources, bringing together not only the chief questions, but the opinions on these questions held by leading writers in the field.

This study makes plain the achievements of the League of Nations in establishing a system of international administration. The administration of the mandated territories under the League of Nations has provided exceptional opportunities for the whole machinery of international control to be better understood and the possibilities that are created for fuller cooperation among the nations that are using the agencies of international adminis-

tration are more widely known. It is difficult to overestimate the value of this phase of the practical work of the League of Nations. In every case of mandate, the Mandatory renders to the Council of the League of Nations an annual report in reference to the territory committed to its charge. The Covenant provides further that the degree of authority, control or administration to be exercised by the Mandatory shall, if not agreed upon by the Members of the League, be explicitly defined in each case by the Council. The administrative machinery is completed by the Permanent Mandates Commission, constituted to receive and examine the annual reports of the Mandatories, and to advise the Council on all matters relating to the observance of the mandates.

There has never been a time when the will for peace was more insistent. But this is not enough. The future of peace demands the organization of interests and the use of agencies of control; and never before have nations been able to co-operate continuously in planning economic and political policies with a view of ensuring both the well-being and development of those colonies and territories inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world. This is through the instrumentality of the League of Nations and it means a new epoch in international co-operation and international administration. The League of Nations through publicity, information, conference and consultation, has set up the machinery through which it is possible for modern democracies to contribute to the enduring foundations of world peace.

CHARLES W. PIPKIN.

CHAPTER ONE

# MODERN AFRICAN QUESTIONS AND THEIR BACKGROUND

## 1. African Problems and the Awakening Interest in Their Solution

The average citizen of any modern nation, sitting back complacently among the many little comforts and luxuries which those of an advanced civilization consider almost as necessities, thinks very rarely of the native of Africa. And when, for one reason or another, he does take the time to give a passing thought to the African aborigine, he considers him more as a subject for the activities of religious missionaries than as a human being, the protection of whose worldly welfare, from a practical standpoint at least, is of more vital importance to the native than is that of the spiritual well-being of his soul.

It is evident, however, that in this day and time there is developing a widespread interest in the continent of Africa and its inhabitants. As a result of stirring addresses by missionaries returned from the field of action, and various articles written in defense of native rights, the everyday man is beginning to realize that heinous crimes have been, and are being, in some regions, even now, committed against the indigenous African races by their fellow-men.

Among the pages of history there are to be found the stories of many such abuses; and it is these records which are in large part responsible for the growing demand that the African native be given justice. For a most striking example of the unfair methods employed by the white man in his dealings with the black, one has but to read the story of that remarkable transaction in the rubber industry inflicted by Leopold of Belgium upon the unsuspecting and helpless natives of the Congo region. For thirty-three years this monarch ruled with an iron hand, his policy being to make all vacant lands the property of Leopold.[1] There was established a state monopoly on ivory and rubber, the natives being permitted to sell these goods only to the favored

[1] Moon, Parker T., Imperialism and World Politics, chap. v., p. 82.

company, or to others authorized by it to buy. In addition, each native village was assessed a tax. To collect this, there was organized a native army, which later came to be very oppressive and brutal. Concessions were then granted to corporations for the exploitation of the territory, Leopold reserving half of the stock in each concession. Various estimates have been made as to the profits which the king of the Belgians derived from this undertaking; but it is generally agreed that the fortune which he garnered here totalled at least twenty millions of dollars.[2] In fairness to Leopold, however, and without attempting to deny that the native inhabitants were very cruelly and unjustly treated, it must be said that the abuses perpetrated on the residents of the Congo region were probably no worse than those found throughout the history of tropical colonization as a whole. Further, it must also be stated that the weight of evidence indicates that Leopold invested the fortune which he made in the Congo almost entirely in beautifying and developing the Belgian nation.[3]

This illustration clearly establishes the fact that there exists a real African problem, the solution of which undoubtedly will constitute one of the outstanding topics in international fields during the years to come. This great problem of course has its subdivisions; for example, there are the problems concerned with labor, those which deal with the religious and spiritual aspects of native life, and those which involve the development of African industrial and commercial interests. But there is another sector of the fundamental problem which, to the minds of many, should be regarded as the root of the whole question. That sector, namely, the land problem, in all of its varied phases, has been chosen as the subject of the present volume.

But, in turn, the land problem itself may be divided into several constituent elements, each of which will be given as comprehensive a discussion in the course of this work as the material available will permit. In the first place, there is the matter of land tenure. Mr. E. D. Morel has admirably stated this phase of the problem in the following comment:

> Are the peoples of Africa to be regarded as land-owning communities? Or is native tenure in land to be swept

[2] IBID., pp. 79-85.

[3] Lichtervelde, Louis de, LEOPOLD OF THE BELGIANS, pp. ix-x.

away? That is the fundamental issue, because in that issue is involved the destinies of the African peoples, and the whole character of the future relations of Africa with the outer world.[4]

In this portion of the discussion, there will be given as full a treatment as is possible of the various systems of native land tenure, there being pointed out the complications which have arisen as a result of the introduction into native areas of modern capitalistic enterprise. A general description of the present system of native reserves will also be included.

In the second place, the subject of the alienation of land in these mandated territories will receive a thorough investigation. An attempt will be made to show concisely the exact nature of the various restrictions which have been imposed on the indigenous peoples in their alienation of land to non-natives, and to present some definite facts as to the amount of land which has already been alienated, showing the relationship of the acreage of the land so granted to the total area available for alienation. The methods by which land may be acquired for public purposes will also be considered, this question being of course a matter of fundamental importance in any territory.

In the third place, there will be presented as comprehensive an explanation as possible of the various arguments for and against the segregation of the native races in the territory of South-West Africa, bringing out definitely the relative weight of the points advanced by the supporters of each side of the discussion.

Finally, in the fourth place, a chapter will be devoted to the very interesting topics of the Land and Agricultural Bank of the territory of South-West Africa, the various methods by which the natives are being encouraged to improve their agricultural prowess, the means which have been provided for the survey and registration of transactions in land in the regions under consideration, and the disposal which has been made of the property of ex-enemy nationals. The profit to be gained from a study of these subjects, even though it be quite brief, is apparent. The Land and Agricultural Bank is doing noteworthy work in land settlement in South-West Africa; and considerable attention is being given in all the territories to the agricultural education of

[4] Morel, E. D., THE BLACK MAN'S BURDEN, Part III, chap. xii., p. 167.

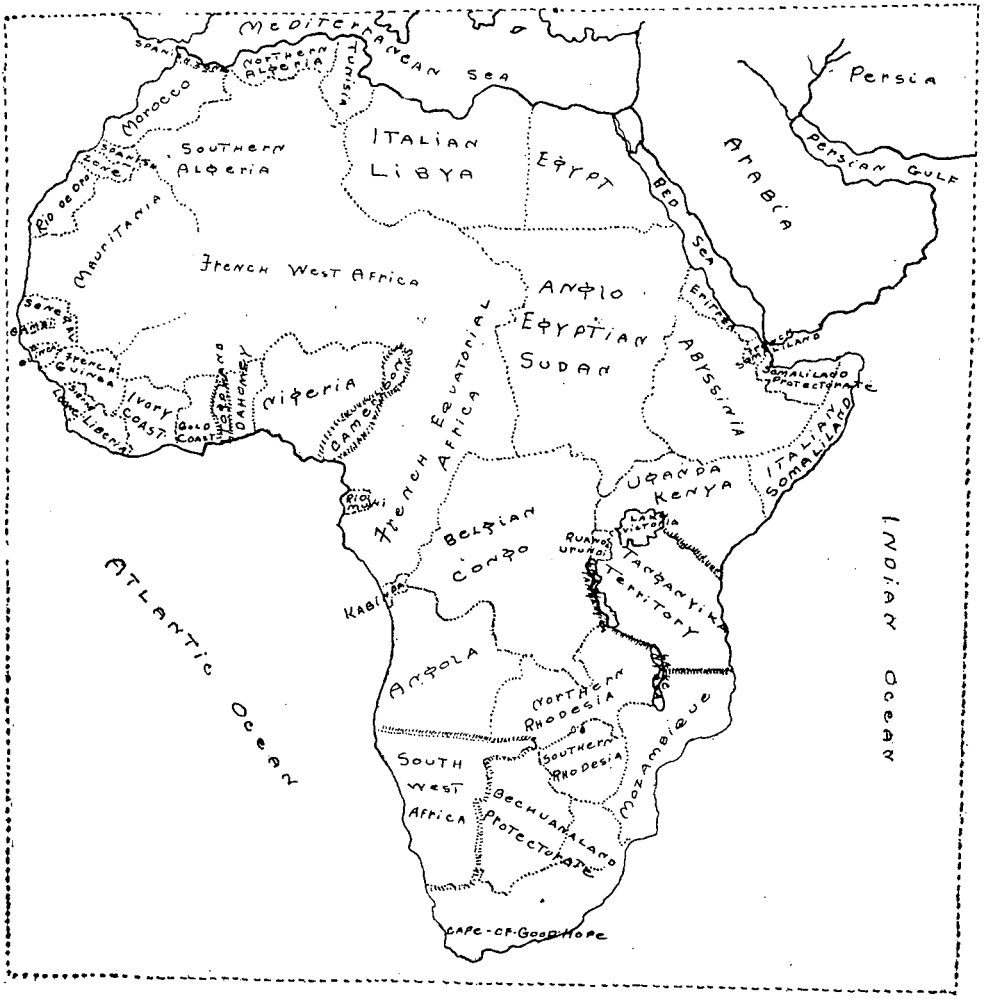
the aboriginals. It is needless to emphasize the importance of the systems of survey and registration, as it will easily be seen that the establishment of a clear title to the land, along with the compilation of an intelligible record of the transactions in which it has figured, is essential to the security of native tenure. The matter of the disposal of ex-enemy property, that is, of that property which was held in these territories by German citizens at the time that these regions were a very important part of the German colonial empire, constitutes a subject with which the administrative powers have never before been involved. At the conclusion of the war, when Germany turned over her colonies to the Principal Allied and Associated Powers, these properties were of course also lost. The manner in which the Mandatory Powers have dealt with these ex-enemy holdings is naturally a subject of the greatest interest to the student of international relations.

Such, then, are the principal divisions of the land problem in the African mandates of the British Commonwealth. Numerous writers, some of whom may be classified as specialists on the problem of the relationship of the white and the black races, as Buell, Johnston, Morel, and Lugard, have said from time to time that the native question is the land question. It is hoped that in a volume devoted to a consideration of the various topics which have been mentioned, there can be developed a satisfactory treatment of the land problem as a whole.

## 2. The African Mandates as a Field for Research

As certain of the territories administered under the mandates system, a comparatively new development, have been selected as the field of research for this volume, it seems desirable that there be some mention of those reasons which were responsible for the choice.

In the first place, as has been said, the mandatory system is a development of our own times, based on certain fundamentals, the spirit of which, if obeyed, must invariably lead to better administration, at least from the native point of view, of the territories concerned. It will therefore be both interesting and profitable to consider just what these principles are, and to discover to what degree the mandatory powers are fulfilling them.




AFRICA

(Adapted from OFFICIAL YEAR BOOK OF THE UNION OF SOUTH AFRICA, No. 6)

In the second place, Britain is the leading colonial power of the world; and it accordingly seems logical that her colonial policies should be the most important. The attitude of the British government toward the mandatory system, as reflected in the administration of the mandates assigned to it, should indicate to a large degree the position with regard to that system which is to be taken by all the Great Powers.

Finally, in the third place, in a contemplation of these mandates, it will be possible to present a contrast of the attitude toward the native populations held by purely colonial as well as mandatory administrations, this being accomplished through brief references to the old German land policies, and through fuller discussions of those of the present governments.

## 3. COLONIES VERSUS MANDATES

Before the reader can grasp the full significance of the chapters which follow, it will be necessary for him to understand perfectly the distinction between the position and status of the ordinary Crown Colony of the British Empire and that of those mandates which are the basis of this discussion. It is with the hope of clarifying any question which may exist as to this distinction that the present section is included.

Simple "colonies" have been known for ages past. Technically speaking, by "colony" is meant a community politically dependent in some degree or form, the major or dominant portion of whose membership belongs by birth and origin to a mother country, such persons having no intention of returning to the mother country or of seeking a permanent home elsewhere.[5] Actually, however, this definition is not fully applicable to the British colonies, for in few of them could it be said that "the major or dominant portion of the membership belongs by birth and origin to the mother country." Rather, the British colonial empire has resulted from the operation of a policy of expansion which necessarily involved the subjugation of all such races and peoples as stood in its way.

A Crown Colony may be defined as a colony under the complete administration of the British Colonial Office, which exercises its power through diverse administrative agencies. It will

[5] Egerton, H. E., THE ORIGIN AND GROWTH OF GREATER BRITAIN, chap. i., pp. 2-5.

be understood that such a colony is thoroughly British, being the actual property of Britain, administered by British officials under British law for the person of the British Crown, and constituting an integral portion of that vast body of states which make up the empire of His Britannic Majesty.

The mandate, however, is a new form of colonial tenure, devised by the Versailles diplomats in 1919, under which the colonial and other possessions of the defeated powers were placed in the custody of the League of Nations, on the pretext that such action constituted a benefit to humanity. By the terms of the treaty, these ex-possessions of the conquered nations were assigned to particular states to be administered for fixed terms as mandates of the League. Their status is shown in the following excerpt from the British Mandate for East Africa:

> The Council of the League of Nations:
>
> Whereas by Article 119 of the Treaty of Peace with Germany signed at Versailles on June 28th, 1919, Germany renounced in favour of the Principal Allied and Associated Powers all her rights over her oversea possessions, including therein German East Africa; and . . .
>
> Whereas the Principal Allied and Associated Powers agreed that, in accordance with Article 22, Part I (Covenant of the League of Nations), of the said treaty, a mandate should be conferred upon His Britannic Majesty to administer part of the former colony of German East Africa, and have proposed that the mandate should be formulated in the following terms; and
>
> Whereas His Britannic Majesty has agreed to accept the mandate in respect of the said territory, and has undertaken to exercise it on behalf of the League of Nations in accordance with the following provisions; and
>
> Whereas by the afore-mentioned Article 22, Paragraph 8, it is provided that the degree of authority, control, or administration to be exercised by the Mandatory, not having been previously agreed upon by the Members of the League, shall be explicitly defined by the Council of the League of Nations;
>
> Confirming the said mandate, defines its terms.[6]

Theoretically, then, these regions are in no sense the property of the power which administers them under the mandatory system of the League; actually, however, there are many who

[6] C. 449 (1) a. M. 345 (a). 1922. VI. British Mandate for East Africa, p. 3.

consider that the acceptance of a mandate is merely a veiled annexation, the "C" mandates, for which the provision is made that they shall be administered as an integral part of the territory of the Mandatory Power, being particularly scored on this point. Nevertheless, it should be clear that in theory at least, (and, with one exception, to a flattering degree in practice also), the mandated territories which are to be studied in this volume are not considered as the property of the British Commonwealth, but are thought of as being merely assigned to it for administrative purposes by the League of Nations, to which annual reports must be made as to the system of government employed, the problems encountered, and the policies pursued.[7]

### 4. The Influence of Imperialism

As imperialism, the desire of nations for domination over subject peoples and extensive territories, is largely responsible for the existence in Africa today of those conditions with which the reader is to come in contact in this volume, it seems proper that he should be reminded of the vast significance of imperialism in international relations; that it has been always an influential and sometimes a dominant factor in the determination of the policies of the Great Powers; that it has been the cause of numerous international crises and wars; that it was one of the primary factors in the formation of the Triple Entente; that it was one of the chief causes of the Great War, being a prominent feature in the war aims of both the Allied and the Central Powers; and, finally, that even since the close of that terrific struggle it has continued to be a cause of antagonism and international rivalry, expressing itself in the mad race for concessions with regard to oil, raw materials, markets, and various investments, totaling billions of dollars, in colonies and backward countries.[8]

Perhaps, too, mention should be made of the dynamics, the driving forces, of imperialism. In the first place, there are busi-

[7] "The annual report is a matter of importance; it is examined by the Mandates Commission of the League, an impartial body on which a majority of members are not nationals of mandatory states, which obtains explanations from a responsible officer of the mandatory, and the report of the Commission with any observations of that officer are submitted to the League." Keith, A. B., The Constitution, Administration, and Laws of the Empire, Part II, chap.viii., p. 295.

[8] Moon, Parker T., *op. cit.*, chap. i., pp. 1-7.

ness groups, as exporters, importers, manufacturing and shipping interests, investors and bankers, and subsidiary associations, to all of whom imperialism is an extremely important factor in the opening of new fields for expansion. In the second place, there are various military and naval bodies, who may advocate an imperialistic policy as a necessary measure, for example, in the acquisition of some region essential to the strategic defense of the nation. And finally, the growth of imperialism has been stimulated through the activities of missionaries, as Livingstone; of adventurers, as Brooke; of explorers, as Stanley; and of various national statesmen, as Disraeli, Ferry, and Roosevelt.[9]

Such, then, are the groups which are actively interested in the development of an imperialistic policy. But, potent though these interests are, before such a policy can achieve success in any country, it must have the approval of that vast body known as the common citizenship. What, then, are those powerful motives which have such appeal as to change the ordinary, everyday citizen into an advocate of imperialism?

In the first place, there is fear, which naturally leads to the desire for naval bases or strategically situated regions for the protection of the country or its possessions, to the wish for the control of all such raw materials as may be needed in time of war, and to the belief that the possession of colonies will guarantee future economic prosperity. In the second place, there is the motive of national economic solidarity, which leads to the support of private business interests of fellow-citizens much more readily than to that of enterprise sponsored by foreign interests. As a third motive, and a very powerful one it is, there is the popular desire for national greatness, prestige, and honor, which may be divided into the belief that a great nation must retain its prestige by protecting its citizens and their property in other countries, into national unwillingness to accept the humiliation of permitting some other nation to obtain a disputed territory, and into the desire to have an empire as large as that of any other nation. Too, the punishment of atrocities or insults to the national flag often indirectly leads to imperialist annexation, as was the case when France went into Algeria. And finally, in the fourth place, there is the motive which Moon calls "aggressive

[9] IBID., chap. iv., pp. 58-67.

altruism," expressed in Kipling's conception of "The White Man's Burden," in British pride in British humanitarianism in India, and in the German desire to extend German *kultur* to the natives of Africa.[10]

These, in brief, are the principal facts which are necessary to give the reader a clear conception of the great part that imperialism has played, and even now continues to play, in the relations of modern colonizing powers. For fifty years the continent of Africa has been the setting for a bitter struggle between rival colonial states; at the present time, it continues to be the scene of such a conflict. But the modern combatants strive not for territory, but for concessions, goaded on by the forces of economic imperialism. It is from this movement that Africa today is most endangered; and it is therefore against this peril that the Mandatory Powers must endeavor to protect their trusts.

### 5. Land-Grabbing in a Crown Colony

There can be little doubt that the outstanding need of the African native at this time is the protection of his economic welfare; he must have support against those grasping commercial interests which would take advantage of him. The primary consideration of the entire question must be whether the mandatory system of the League of Nations can and will give him that protection. Certainly he has not received it in the past in the Crown Colonies of the British Empire. As an example of the manner in which native rights have been disregarded in such areas, one may consider certain events which occurred in what is now Southern Rhodesia, formerly a Crown Colony.[11] Here there was pursued a very ruthless policy with regard to the taking of native lands, so ruthless in fact that even now it remains a blot against the name of the British Empire.

At the time in question, there was ruling in the territory King Lo Bengula, a Matabele chief who could not read. He was induced by three commissioners of Cecil Rhodes, the noted imperialist, to sign, on October 30th, 1888, a most interesting document. In return for one thousand Martini rifles, a hundred thousand ball cartridges, a hundred pounds sterling payable on

[10] Ibid., pp. 67-74.

[11] At the time the first of these disgraces occurred, Southern Rhodesia was not a Crown Colony.

the first day of every lunar month, and a second-hand steamer, the native king delegated to these commissioners exclusive control over all the metals and minerals within his country, along with the right to exclude from the kingdom any other person who might come there in search of such concessions. Later messages from Lo Bengula show that at the time when he signed this agreement, he was totally ignorant of its contents; but the white men interpreted it as giving them the right to exploit and to govern all the territory of the native monarch.[12]

The following year Queen Victoria granted the South Africa Company a charter which gave it

> for twenty-five years the right to make treaties and laws, maintain police, construct roads, railways and harbors, develop mines and industries, make grants of land, and in short, govern a vast but purposely undefined area, north of British Bechuanaland and Transvaal, and west of Portuguese Mozambique, but with no northern boundary. The latter was left unmentioned, because Rhodes hoped to extend it far to the north.[13]

With a capital of a million one-pound shares, of which the promoters took ninety thousand shares and fifty per cent of any future profits, the Chartered Company began business operations. For over thirty years it ruled as it pleased, until the growth of the white population resulted in the creation of Southern Rhodesia as a self-governing colony in 1922.[14]

On November 17th, 1891, Lo Bengula made the Lippert Concession, which was later purchased by the British South Africa Company. The essential portion of this concession was the granting by Lo Bengula, in return for a down payment of one thousand pounds and an annuity of five hundred pounds,[15] of the following rights and privileges to a German financier, one Edward Amandus Lippert:

> The sole and exclusive right, power, and privilege for the full term of one hundred years to lay out, grant, or lease, for such period or periods as he may think fit, farms, townships, building plots, and grazing areas; to impose and levy rents, licenses, and taxes thereon, and to get in, collect, and receive the same for his own benefit; to give and grant cer-

[12] IBID., chap. ix., pp. 168-170.
[13] IBID., p. 170.
[14] IDEM.
[15] Harris, Norman D., EUROPE AND AFRICA, chap. ix., p. 233.

tificates in my name for the occupation of any farms, townships, building plots, and grazing areas.[16]

During all the years of government by the Chartered Company, the whites received the best agricultural lands, while the natives were given large reserves of much poorer quality. A head tax of one pound per annum was collected from the natives living on reserves, while an additional pound was paid to the owner by those living on the land of a white man.[17] "The area claimed as the private property of the shareholders (of the Company) included, besides all waste lands, every square foot of land occupied by the natives;"[18] the total claim covered some seventy-three million acres of land. Mr. E. D. Morel shows a very comprehensive understanding of the situation which has existed in Southern Rhodesia:

> Since these events took place the Chartered Company, basing its claims to unalienated land, in part upon the Lippert concession, which, as already stated, the Judicial Committee of the Privy Council has now declared to be valueless for that purpose, and in part upon military conquest, has perused the policy of treating the land of Southern Rhodesia as though it had passed entirely out of native ownership and had become the property of the company's shareholders. It has divided the land into two main categories, alienated and unalienated. Land in the occupancy and ownership of white men is called alienated land. Any native living on such land pays the white occupant and owner one pound per annum, and a further pound per annum to the Company as head tax. Unalienated land is the land not in the occupancy and ownership of white men, and includes the native reserves. Natives living in the reserves pay one pound per head per annum to the Company as tax, and another pound per head per annum for the privilege of living where they do. Portions of this unalienated land outside the reserves can, apparently, be taken over at any time by individual white men, provided, of course, that they obtain the Company's sanction. The natives living on such acquired portions are then expected to pay one pound per head per annum to the white acquirer, plus the pound per head they already pay to the Company.[19]

[16] Hone, Percy E., SOUTHERN RHODESIA, Part II, chap. i., p. 110.

[17] Moon, Parker T., *op. cit.*, chap. ix., p. 172.

[18] Harris, John H., AFRICA: SLAVE OR FREE? Part III, chap. ii., p. 133.

[19] Morel, E. D., *op. cit.*, Part II, chap. v., p. 49.

This case has been cited as an example of modern land-grabbing in a Crown Colony of the British Empire, for it was not until July 29th, 1918, that the Judicial Committee of the Privy Council declared that the Lippert Concession was worthless as a title deed to the unalienated lands, and checked the landed imperialism of the Chartered Company.[20]

### 6. The Status of Native Land in the Mandates

If modern administration in these regions, under the mandatory system, can prevent the occurrence of any events of such a regrettable nature as those of the case discussed in the preceding section, then this new departure in colonial administration will have achieved success. With particular reference to the land problem, it may be said that it is the desire of the League of Nations, in accordance with the doctrine that the mandated areas constitute "a sacred trust of civilization," amply to protect the rights of the native inhabitants. This is shown, for example, in the sixth article of the Mandate for the Tanganyika Territory, which reads as follows:

> In the framing of laws relating to the holding or transfer of land, the Mandatory shall take into consideration native laws and customs, and shall respect the rights and safeguard the interests of the native population.
>
> No native land may be transferred, except between natives, without the previous consent of the public authorities, and no real rights over native land in favour of non-natives may be created except with the same consent.
>
> The Mandatory will promulgate strict regulations against usury.[21]

Further proof of the desire of the League that the native shall not become the victim of wholesale land-grabbers is found in the section on land tenure in the list of questions which the Permanent Mandates Commission desires shall be dealt with in the annual reports of the Mandatory Powers:

> 103. Is the Government's policy directed towards the exploitation of the arable land by the establishment of large agricultural undertakings under foreign management or by the development of the system of native small-holdings?

[20] Law Reports, A. C. 1919, p. 211. Quoted in Buell, Raymond L., The Native Problem in Africa, Vol. II, p. 210.

[21] C. 449 (I) a. M. 345 (a). 1922. VI. British Mandate for East Africa, p. 4.

104. What are the various classes of property which, in view of their nature, origin or use, constitute the domain of the territory?

Under what item of the local budget do the revenues of this domain appear, or, in the case of the sale of such property, the sum realised?

Under what items of the local budget do the costs of exploiting such domain appear?

Are the recruiting and employment of the labour required for the exploitation of this domain regulated by the common law?

105. Does the law provide a definition of the term "vacant lands?" What authority is competent to decide whether land is vacant?

Does the law recognise the rights of use and enjoyment that may be exercised by the natives in the "vacant lands" (the right of gathering produce, cutting of wood, grazing, hunting, fishing, etc)?

106. Has the Mandatory Power acquired on its own account (and not in its capacity as Mandatory) any property or rights whatsoever in the territory? If so, what property or rights?

On what basis does the State's proprietary title rest?

Is this property subject to the same dues and charges as the property of private individuals?

Is the State subject to the ordinary regulations regarding the recruiting and employment of the labour needed for the exploitation of these lands?

How is the revenue of these lands employed?

107. What is the system of land registration in force? Is it applicable to land owned or occupied by natives? Is there a land registry department?

108. What is the native system of land tenure? Is it uniform throughout the territory? Have the natives any notion of the right of individual property?

Does the law recognise the right of natives to hold property as individuals?

109. Do the authorities exercise control over land transactions with a view to safeguarding the customary rights of the natives on such land?

What is the maximum term of land-leases to non-natives?

Does the law reserve land for the natives or native communities, from which they cannot be dispossessed for the benefit of non-natives?

110. Have the native chiefs the power of dispossessing existing occupiers and of granting the land to third parties? If so, have the persons dispossessed the right of appeal to the authorities?

What is the approximate proportion in the whole territory of native land, state land, and land leased or sold to non-natives, including any property of the Mandatory Power referred to in Section 106?

111. What are the regulations with regard to expropriation for reasons of public utility? How is the compensation determined?[22]

It is certainly not difficult to establish the conclusion that the characteristics of the mandate differ radically from those of the Crown Colony, and that the position of the native and his land varies decidedly under the two forms of administration. In the remainder of this dissertation an attempt will be made to indicate clearly those conditions existent under the mandatory system which have tended to improve the status of the indigenous peoples. Moreover, throughout the volume there will be developed the relationship between the various land policies pursued and the fact that these territories are mandates of the League of Nations, with their administration consequently being ever subject to the searching light of public inquiry and the all-powerful, compelling force of public opinion.

[22] A. 14. 1926. VI. LIST OF QUESTIONS, pp. 6-7.

CHAPTER TWO

# A PRESENTATION OF THE TERRITORIES INVOLVED

## 1. SCOPE OF THIS CHAPTER

Africa to the white mind has always been the so-called "Dark Continent," its mention conjuring up pictures of naked savages struggling through grass-grown jungles, of crouching lions and massive elephants terrorizing helpless native villages, and of lengthy caravans toiling across hot desert sands. Some such image comes to almost every individual no matter what part of Africa may be the subject of the discussion. Yet such representations are not true of all portions of this interesting continent. The present volume deals exclusively with African territory, all, it is quite probable, constituting a setting entirely unfamiliar to the average American or European. In recognition of this fact, and in order that the reader may be fully appreciative of the scene of action, there has been prepared this chapter, which is devoted to a presentation of the physiographical, social, and historical background of the regions which are to be considered.

## 2. BRITISH TOGOLAND

### (a) PHYSIOGRAPHICAL CHARACTERISTICS

In western Africa, on the Gulf of Guinea, with the French colony of Dahomey constituting an eastern boundary and the British Gold Coast and its protectorates a western limit, there is situated the former German colony of Togoland.[1] In the north and east, with the exception of the extreme southern portion of the eastern frontier, there are found artificial boundaries; but along the western line natural features predominate.[2]

By the Anglo-French Declaration which Viscount Milner and Monsieur Simon signed at Paris on the 10th of July, 1919, Togoland was divided into two administrative sectors, the one

[1] REPORT ON THE BRITISH MANDATED SPHERE OF TOGOLAND (hereinafter cited as REPORT) FOR 1920, p. 4.

[2] Peace Handbook No. 110, TOGOLAND, (hereinafter cited as HANDBOOK), pp. 1-2.

under French authority, and the other under the control of the British.[3] Although the area of the old German colony totalled about 36,500 square miles,[4] the division was so made that the district which became British Togoland comprises, approximately, only 13,040 square miles.[5] With regard to the nature of the surface of this territory, it is possible to divide the entire region into the four following areas:

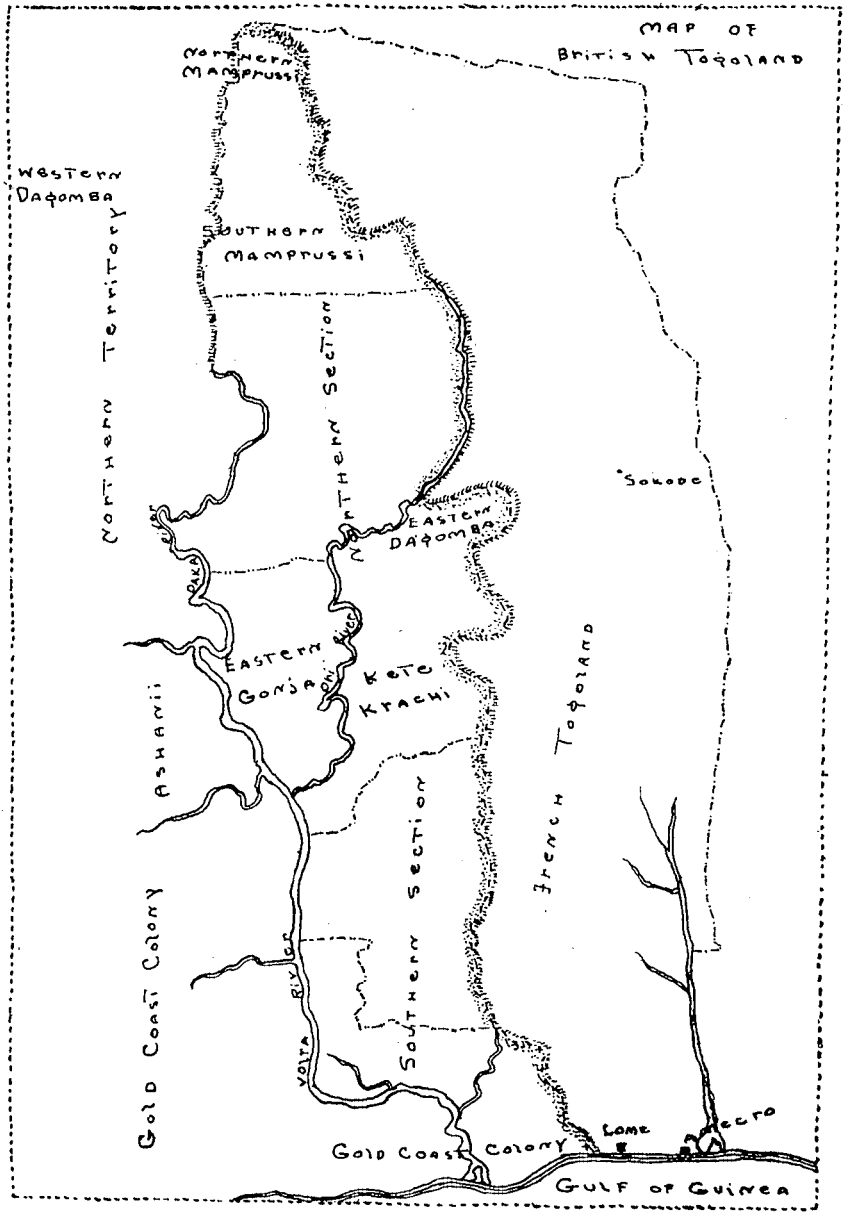
In the first place, there is a coastal district, made up of four parts, these being a few hundred yards of sand, then various lagoons and marshes, with a low plateau serving as a background for the whole area. Proceeding away from the coast, this plateau becomes again a depression.[6] Thus it will be seen that Togoland is very unfortunate in its coast, for not only has its seaboard these more or less unfavorable aspects, but it is also very short in proportion to the size of the country, there being in the entire old German colony only 32 miles of coast.[7]

In the second place, there is in the southeast, behind the depression mentioned in the preceding paragraph, a somewhat higher plateau, reaching in some places an altitude of 1600 feet. It is punctuated from time to time by isolated hills.[8]

In the third place, there is the central mountain range, in which there are found no great elevations and no extensive plateau land. The southwestern part of this chain is known as the Togo range, consisting of a central ridge with outlying lateral chains on the east and west. In this is found Mount Agu, which, rising to an altitude of 3370 feet, is the highest mountain in the territory. The northeastern sector of the chain is the Kara-gap region, which is made up of a series of broad plains, the average elevation being about 2500 feet above the level of the sea.[9]

Finally, in the fourth place, there are the lowlands of the northwest, also composed of a series of broad rolling plains, bounded on the northern side by the wooded Gambaga hills.[10] The average elevation of this region is approximately 650 feet.[11]

[3] REPORT FOR 1922, p. 4.
[4] REPORT FOR 1920, p. 4.
[5] REPORT FOR 1922, p. 5.
[6] HANDBOOK, p. 3.
[7] IBID., p. 5.
[8] IBID., p. 3.
[9] IBID., p. 4.
[10] IDEM.
[11] IBID., p. 5.




BRITISH TOGOLAND

(Adapted from REPORT ON BRITISH TOGOLAND for 1928)

The central mountain chain divides the rivers of the territory into two groups. These are the Volta system of the west; and that group of rivers found in the southeast, draining into the various lagoons of the coast.[12] The Volta system includes the Volta itself, with its tributaries, which are the Daka, the Asukoko, the Dea, and the Shavoe; and also the Oti, a very important stream. The chief tributaries of the Oti are the Kumagu, the Mo, the Bassa, and the Kara, the latter being perhaps the most important of the four. The principal streams of the southeastern group are the Shio, the Haho, and the Monu, the latter being again the most important of the group.

The rivers of the territory in the rainy season are often raging torrents, prohibiting communication. In the dry times of the year, however, they often disappear partially or entirely, with the exception, of course, of those in the mountain districts.[13]

The climate of Togoland is tropical, and quite similar to that of the Gold Coast,[14] being conditioned largely by the Sahara on the north and the Atlantic on the south. The highest mean temperatures are usually recorded in February and March, the averages then, making allowance for the different altitudes of the country, varying from 79° F. in the mountain districts of the central chain to 82° F. on the coast. The minimum mean temperature is usually found in the months of July and August, the averages at that time running from 70° F. in the mountains to 75° F. in the coastal regions.[15]

In the southwest and on the coast, the rainy season begins in late March or early April, and continues for three or four months, reaching its height in June or July. August brings a dry period. In September, however, the lesser rains set in, and river floods are frequent.[16] The heaviest rainfall is ordinarily in the Ho-Kpandu district, the yearly average there being about 55 inches.[17]

In the north there is only one rainy season, this continuing from April to October. Here the fall is somewhat lighter, about 44 inches being the average yearly precipitation.[18]

[12] IDEM.
[13] IBID., p. 6.
[14] REPORT FOR 1920, p. 6.
[15] HANDBOOK, p. 7.
[16] REPORT FOR 1920, p. 6.
[17] HANDBOOK, p. 7.
[18] IBID., pp. 7-8.

The month of November inaugurates another dry season throughout the entire country, this period as a rule continuing until March.[19] During this interval, however, there are very strong winds, and often quite violent storms.[20] In passing, it might be observed that the seasons are much more sharply defined in the north than they are in the south.[21]

### (b) Social and Economic Aspects

The most important people in the southern part of British Togoland are the Ewes. Having spread across the southwestern end of the central mountain chain, they have absorbed practically all the older populations.[22] To the north is found a mixed zone of various peoples speaking Chi dialects, the leading tribe here being known as the Guams. To the north of this central mixed zone are to be found strong tribes of Sudan peoples, principally Mohammedan, with a tendency to centralize into extremely warlike kingdoms.[23]

The following table shows the distribution of the native population throughout the various districts of the territory in 1927:[24]

| District | Area in Square Miles | Population |
|---|---|---|
| Ho | 1,155 | 40,577 |
| Kpandu | 1,452 | 46,678 |
| Kete-Krachi | 3,911 | 25,244 |
| Eastern Dagomba | 4,609 | 58,929 |
| Eastern Mamprusi | 1,528 | 4,518 |
| Kusasi | 385 | 12,093 |
| | 13,040 | 188,039 |

The principal causes for the accumulation of comparatively large populations in particular localities in British Togoland seem to have been the presence of opportunities for trade, the comparative fertility of the soil and regularity of the rains, and the existence of facilities for refuge in the case of the weaker tribes, and for the command of communications by those which are stronger.[25]

[19] Report for 1920, p. 6.
[20] Handbook, p. 8.
[21] Report for 1920, p. 6.
[22] Handbook, p. 9.
[23] Ibid., p. 10.
[24] Report for 1927, p. 51.
[25] Handbook, p. 11.

According to the report of the Mandatory Power, in 1927 there were only 29 non-natives in the territory.[26] All of these, however, have been generous in giving extensively of their time and energy to work in the interest of the welfare and progress of the region.

British Togoland, although the soil is poor and not more than half of it is in cultivation, is nevertheless a country more of an agricultural than an industrial nature.[27] The chief agricultural products are cocoa, coconut palms, ground-nuts, millet, oil palms, maize, rubber, sisal hemp, fruits, beans, and sugar.[28] The livestock industry in general does not flourish, due to the presence of the tsetse fly; but some growers of cattle, sheep, and goats have achieved a moderate degree of success.[29]

British Togoland also produces certain minerals of some economic value. Among these are iron ore, gold, chromite, bauxite, and limestone, iron ore being the most important. Research has shown that it is of high quality, and that there are available at least twenty million tons. Unfortunately, the deposits are not well situated as regards transport facilities.[30]

Finally, the territory produces certain industrial goods, pottery being the most popular native handicraft. The inhabitants also engage in the making of straw-plait, in rope-work, in the carving of wood and ivory, in dyeing, and in cotton spinning. However, regardless of the existence of these trades, the introduction or development of a class of semi-skilled native labor is an essential prerequisite to the further advance of manufacturing.[31]

### (c) The Political History of British Togoland

With regard to the political history of British Togoland, it may be said that the first European influence was that of the Portuguese, who in the fifteenth century had established themselves in what is now the Gold Coast region. There is no evidence to the effect that they actually made settlements on the

[26] Report for 1927, p. 51.
[27] Handbook, p. 32.
[28] Ibid., pp. 32-35.
[29] Ibid., pp. 35-37.
[30] Ibid., pp. 40-41.
[31] Ibid., p. 53.

Togo coast; yet traces of their influence and blood are found to some extent in modern names and physical characteristics.[32]

The state which later developed into the Kingdom of Prussia and the German Empire made a futile attempt in 1680 to extend its control to Africa. In that year, Frederick William of Brandenburg sent out an expedition which succeeded in gaining treaties from three chiefs at Cape Three Points. In 1682 the Brandenburg African Company was established to develop the trade provided for in the treaties of 1680; and the next year saw the erection of a fort at Cape Three Points. But, although some further expansion was made during the following three years, the Brandenburg settlement was not destined to succeed. With the death of Frederick, the Company was neglected and soon became bankrupt. His successor, who felt no interest in the project, disposed of the African possessions to the Dutch West India Company in 1718.[33] In such a fashion, the early Prussian efforts in Togoland came to an end. The influence of the Dutch was even more negligible, as they made no sustained effort toward colonization.

Regardless, however, of the indifference of the government, German merchants founded business houses and built factories at different points in Togoland, as did the British and the French. Conflicts frequently occurred between these rival enterprises. Such was the situation in 1884 when the German government, finally imbued with the desire of obtaining for Germany "a place in the sun," heeded the demands of tradesmen for the dispatch of a German warship to protect certain German commercial interests in Togoland. This vessel, the *Sophie*, gave her support to a native claiming the chieftainship of Togo, and so filled him with the spirit of German strength and power that on July 5th, 1884, after his establishment as ruler, this chief entered into a treaty with the famous Dr. Nachtigal, by which a German protectorate was declared.[34] During the next two years, agreements as to the boundaries of Togoland were made with France and England, these powers, by their participation in such negotiations, formally recognizing the legality of German influence in this region.[35]

[32] IBID., p. 14.
[33] IBID., p. 16.
[34] IBID., p. 17.
[35] REPORT FOR 1920. p. 4.

There was no particularly outstanding achievement made by the officials of the German government in Togoland during the thirty-five years that the colony was a German possession. In the main, they confined themselves to expeditions attempting to explore and conquer the interior, and to endeavors to extend the frontiers of their political and commercial influence.[36]

Immediately upon the outbreak of the World War, Togoland was occupied by a joint British and French force.[37] On August 7th, 1914, the town of Lome and its surrounding hinterland surrendered to the British; on the 26th of August, after several engagements and the destruction of the great wireless station at Kamina, the acting governor unconditionally surrendered the entire colony.[38]

The next event in the political history of Togoland brought it to its present status. In the Treaty of Peace signed at Versailles on June 28th, 1919, Germany renounced all her rights over her oversea possessions in favor of the Principal Allied and Associated Powers.[39] Togoland was of course included. The Powers then agreed that the governments of Great Britain and France should make a joint recommendation to the League of Nations as to the disposal of the territory. In this recommendation it was proposed that the western part of the former German colony should be conferred as a mandate upon His Britannic Majesty, the eastern portion being similarly assigned to the government of France.[40] The acceptance of these mandates brought to a close, for the present, the political history of one of the most interesting territories in the entire African continent.

## 3. THE BRITISH CAMEROONS

### (a) Divisions of the Territory

For purposes of better administration, the territory of the British Cameroons has been separated by the Nigerian government, which superintends the administration of this mandate, into northern and southern divisions. The northern portion has

[36] Handbook, pp. 19-22.
[37] Ibid., p. 22.
[38] Report for 1920, p. 4.
[39] Article 119, The Treaty of Versailles. Found in Martin, Lawrence, The Treaties of Peace (1919-1923), Vol. I, p. 84.
[40] C. 449 (1) b. M. 345 (b). 1922. VI. British Mandate for Togoland, p. 3.

been further divided into three parts, these being, first, the Emirate of Dikwa, second, "that portion of the British sphere of the Cameroons which lies north of the Benue river and east of the Nigerian province of Yola," and, third, "that part of the British sphere of the Cameroons which lies south of the Benue river and east of the Nigerian province of Yola." The southern half of the mandated area is known simply as the Cameroons province.[41] This division of the territory is accepted in the following discussion of its physiographical, social, and economic characteristics; but the political history of the region will be considered as a unit.

### (b) The Emirate of Dikwa

It has been said that the Emirate of Dikwa, which is a small portion of the ancient Empire of Bornu, has the general shape of a closed fist with two fingers extended, the major portion of the region being a flat and swampy plain lying between Lake Chad on the north and the mountains of Mandara on the south. A strip of territory which stretches to the south on the western side and includes a part of the mountains forms the extension. As to the exact location of the Emirate, it lies between latitudes 10° 50′ N. and 13° 05′ N., and longitudes 13° 10′ E. and 14° 40′ E. Its area is approximately 5,000 square miles.[42]

In examining the surface of the Emirate, one finds first, in the mountain district, a great granite spur, twenty miles in length, rising at some points to an elevation of more than 3,000 feet above the level of the plain.[43] To the north of this region there is a sandy country, in which are to be found numerous swamps and sandy ridges. Further to the north, toward Lake Chad, one encounters a vast expanse of treeless, dead, flat swamp-land, its soil apparently a deposit of argillaceous loam imposed over a sub-soil of a more or less sandy nature. Dreary and monotonous though this plain is, it produces most excellent corn.[44]

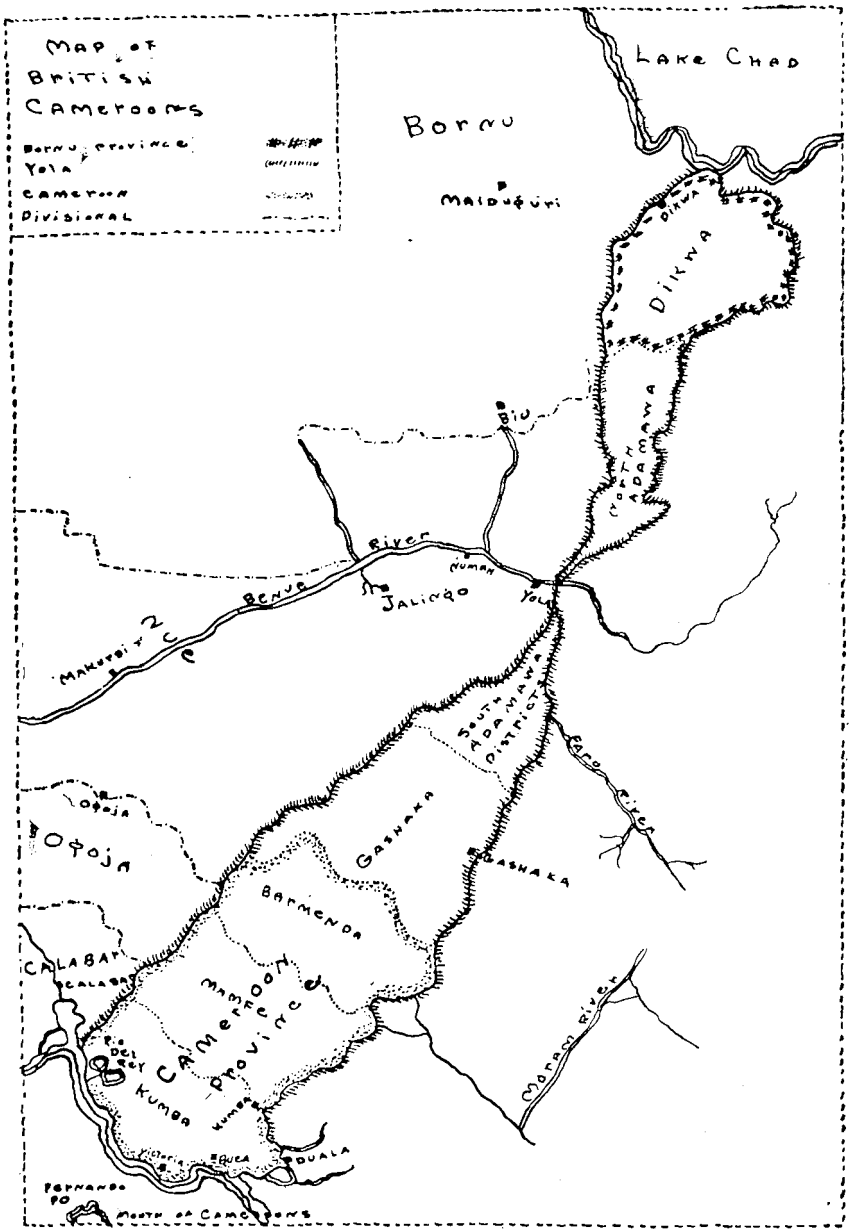
With regard to the matter of coasts, the only coast-line which the Emirate of Dikwa has is a very narrow frontage, (about five miles), on Lake Chad. The extensive growth of tall reeds and grasses here, however, makes passage difficult. Fur-

[41] Report on the British Sphere of the Cameroons (hereinafter cited as Report) for 1922, pp. 2-3.

[42] Ibid., p. 9.

[43] Idem.

[44] Ibid., p. 10.




BRITISH CAMEROONS

(Adapted from REPORT ON THE BRITISH CAMEROONS for 1928)

ther, there are only two rivers of importance, these being the Lebait, with its tributary the Kalia, containing water all the year round, and the Yedseram, flowing for about two months near the town of Dikwa, and for perhaps a slightly longer time in the south.[45]

From the middle of March until early in May intense heat, under the pressure of which the temperature often reaches 120° F. in the shade, characterizes the climate of Dikwa. The four months preceding this period constitute the cold season, during which the temperature sometimes drops as low as 41° F. The nights are generally cool during the entire year.

The rainy season begins in May, and is heaviest from the middle of July until the end of August, with an average precipitation of about twenty-four inches during this period. After the middle of September, a long dry season begins, continuing, with only occasional thunder-storms, until May.[46]

Various races go to make up the population of the Emirate, estimated at 220,000. There are about 87,000 Arabs, these being largely a pastoral people, migrating from their farm villages from December until June in search of pasture. There are about the same number of Kanuri or Berri-Berri. In the southern part of the Emirate are to be found about 10,000 Ghamerghu and Wala, while in the southwest are approximately 15,000 Margi and Batta. Hill pagans, estimated to number around 20,000, living in the mountain districts, and some 2,000 nomad Fulani constitute the remaining inhabitants.[47]

The agricultural products of the Emirate include corn, maize, beans, onions, sweet potatoes, pumpkin, okra, melons, tobacco, and indigo, corn being the most important.[48] As for mineral resources, some iron is found in the mountains.[49] There is no particularly outstanding industry in Dikwa, though spinning and weaving, dyeing, pot-making, saddle-making, and leather-working are common trades.[50] The breeding of livestock in this region, however, has proved to be a very remunerative occupation.[51]

[45] IBID., pp. 10-11.
[46] IBID., p. 12.
[47] IBID., p. 13.
[48] IBID., pp.16-17.
[49] IBID., p. 18.
[50] IDEM.
[51] IBID., p. 16.

### (c) The Cameroons North of the Benue and East of Yola

The second administrative division of the northern Cameroons is that lying north of the Benue river, and east of the Nigerian province of Yola. At its narrowest point, this region is some ten miles in width, but it broadens toward the north. It is approximately 100 miles in length; while its area is not definitely known, it is about 1200 square miles.[52]

The country is primarily one of plains; but there are some granite outcrops of the Jirai and Mandara Hills. The principal rivers are the Kilangi, the Tsikakiri, the Yedseram, and the Masagala, with their respective tributaries. There are a few scattered lakes. While the climate and the seasons correspond in general to those encountered in the Emirate of Dikwa, the average rainfall in this section of the Cameroons is only about thirty-five inches per year.[53]

The population of this small region has been estimated as being at least 60,000. The inhabitants are the nomadic Fulani, of whom there are about 10,000; and the Habe or aboriginals, the principal tribes of these being the Jirai, the Maiha, the Falli, and the Margi.[54]

The agricultural products found in the Emirate are common here, with cotton being grown largely for local use. No mineral resources have been discovered. Spinning and weaving are the principal industries; but the raising of livestock is gaining in importance.[55]

### (d) The Cameroons South of the Benue and East of Yola

The third administrative portion of the northern Cameroons is that which lies east of the Nigerian province of Yola, but south of the Benue river. It is well-watered and fertile, and has an area of approximately 10,000 square miles.[56]

Several clear-cut mountain ranges are found in this region, among them being the Alantika, the Balkwassa, the Jongba, the

[52] Ibid., p. 27.
[53] Ibid., pp. 28-29.
[54] Ibid., pp. 29-30.
[55] Ibid., p. 33.
[56] Ibid., p. 34.

Sapeo, and the Awudi groups in the north, with the Gandua, the Aludu Ganderu, and the Ribao systems in the south.[57] In the valleys the soil is very productive.

The principal streams are the Ini, with its tributaries, and the tributaries of the Deo and the Faro, all eventually flowing into the Benue. The climate may be compared with that of the major portion of the northern provinces of Nigeria, being relatively cool and healthy.[58]

The population numbers probably some 30,000, about 7,000 of these being Fulani. The remaining inhabitants are found primarily in the Chamba, the Mambila, the Daka, and the Jubu tribes.[59]

In addition to the agricultural products found in other sections of the northern Cameroons, rice and pineapple grow readily. As in the portion north of the Benue, there is no definite knowledge of the existence of any mineral resources. Very few persons engage in any form of manufacturing, those who do confining themselves primarily to spinning, weaving, and basketwork. The economic salvation of the natives seems to rest rather in the rearing of cattle, sheep, and goats than in the development of industry.[60]

### (e) The Cameroons Province

The southern section of the British Cameroons is known simply as the Cameroons Province of Nigeria. Forming a long, narrow wedge, some eighty miles in width and three hundred miles in length, it has an area of approximately 17,548 square miles.[61]

Its physical features are quite diverse in nature, the country as a whole being broken and difficult of passage. The surface varies from the mangrove swamps at sea level to the volcanic Cameroon Mountain, which reaches an elevation of 13,350 feet. Much of the province is covered with forest, although the Bamenda division is principally grassland. The only rivers of any importance are the Cross, the Membe, and the Mungo; they,

[57] Ibid., p. 38.
[58] Idem.
[59] Ibid., p. 35.
[60] Ibid., pp. 43-44.
[61] Ibid.,p. 47.

during the rainy season, are navigable for launches to some extent.[62]

On the coast there are three excellent harbors, these being Victoria, situated on Ambas Bay, Tiko, on the delta of the Mungo river, and Rio del Rey, a very fine natural harbor. The second of these, Tiko, has a splendid wharf, and is now used by the government as an engineering repair depot for its craft.[63]

The climate ranges from the almost tropical conditions near Rio del Rey to the invigorating temperature of the Bamenda district, where the mean is about 64° F. The average yearly rainfall varies from slightly over 100 inches at Buea to a total well in excess of 400 inches on the coast lying west of Victoria. This spot is considered one of the rainiest places in the entire world.[64]

In general, the same races which have been found elsewhere in the Cameroons compose the population of approximately 358,000 natives.[65] The non-native population is made up primarily of traders and government officials.[66]

The chief agricultural products of this district are cocoa, rubber, ground-nuts, beans, pepper, and maize, the latter being one of the staple foodstuffs of the native population. The great forests of the province contain much valuable oil palm, mahogany, and camwood. There are no outstanding mineral deposits, though iron ore and basalt are found in varying quantities.[67]

Although manufacturing has here achieved no noticeable foothold, some of the natives are skilled in the smelting of iron ore and the fashioning of iron products, the weaving of mats, the making of pottery, and the extraction of salt from the salt springs occurring near Ossidinge.[68]

In the southeast, many cattle, sheep, and goats are raised without difficulty. The presence of the tsetse fly, however, makes

[62] IBID., p. 48.
[63] IBID., p. 49.
[64] IDEM.
[65] IBID., p. 47.
[66] No figures were available indicating the proportion of the non-native population found in each administrative division of the British Cameroons. The *Report for 1927*, p. 90, however, states that there were at that time 258 non-natives in the entire territory. This *Report* further states that the total native population in the British Cameroons at that date was approximately 700,000.
[67] REPORT FOR 1922, p. 50.
[68] IBID., p. 51.

impossible the establishment of any livestock farms near the forested regions.[69]

### (f) The Political History of the British Cameroons

The old German colony of Kamerun, of which the territory known as the British Cameroons constitutes only a very small part, was never the possession of any European power before its occupation by Germany. In the fifteenth century, however, its coast was explored by the Portuguese, who, in accordance with the policy which they pursued in Togoland, made no attempts to establish a colony. About 1845 an English Baptist mission was founded in the territory;[70] to this, in 1858, on the occasion of their expulsion from the island of Fernando Po, there came another body of the same faith. Purchasing land from the natives, they here established themselves, calling their settlement Victoria. Their government requested that Great Britain declare a protectorate over the colony. Although this action was never taken, the British flag was flown by the native chieftains of the Victoria region as the symbol of the nation under whose authority they desired to place themselves.[71]

About the year 1883 the great Bismarck ceased to oppose colonization. Learning of his change in attitude, certain German merchants who were trading in the region which was to become German Kamerun began to acquire rights to property from the native chiefs. In 1884, the well-known German emissary, Dr. Nachtigal, was sent to West Africa as Imperial Commissioner. Although ostensibly his object was the promotion of German trade, he nevertheless had full power to annex any available land which he might encounter.[72] At the same time an English representative, Consul Hewett, was on his way to West Africa with exactly the same object in general, and with the particular purpose of accepting the application for the establishment of a British protectorate which had been made by the Victoria government. But Mr. Hewett was too late. On July 12th, 1884,[73] Dr. Nachtigal concluded a treaty with King Bell of Duala, by which

[69] Idem.

[70] Peace Handbook No. 111, Cameroon, (hereinafter cited as Handbook), p. 15.

[71] Report for 1922, p. 47.

[72] Handbook, p. 15.

[73] Ibid., p. 16.

he planted the German flag over the Cameroons.[74] The British, after a few protesting negotiations, withdrew, leaving the Germans in full control, even of the settlement of Victoria.[75]

As in German Togoland, there were no outstanding achievements made by the administrative officials of German Kamerun. They devoted their time to explorations in the interior, and to an extensive campaign against native rebellions, which were numerous.[76] Yet on the face of the available evidence, it would seem that the conduct of the German authorities quite often justified these uprisings.[77]

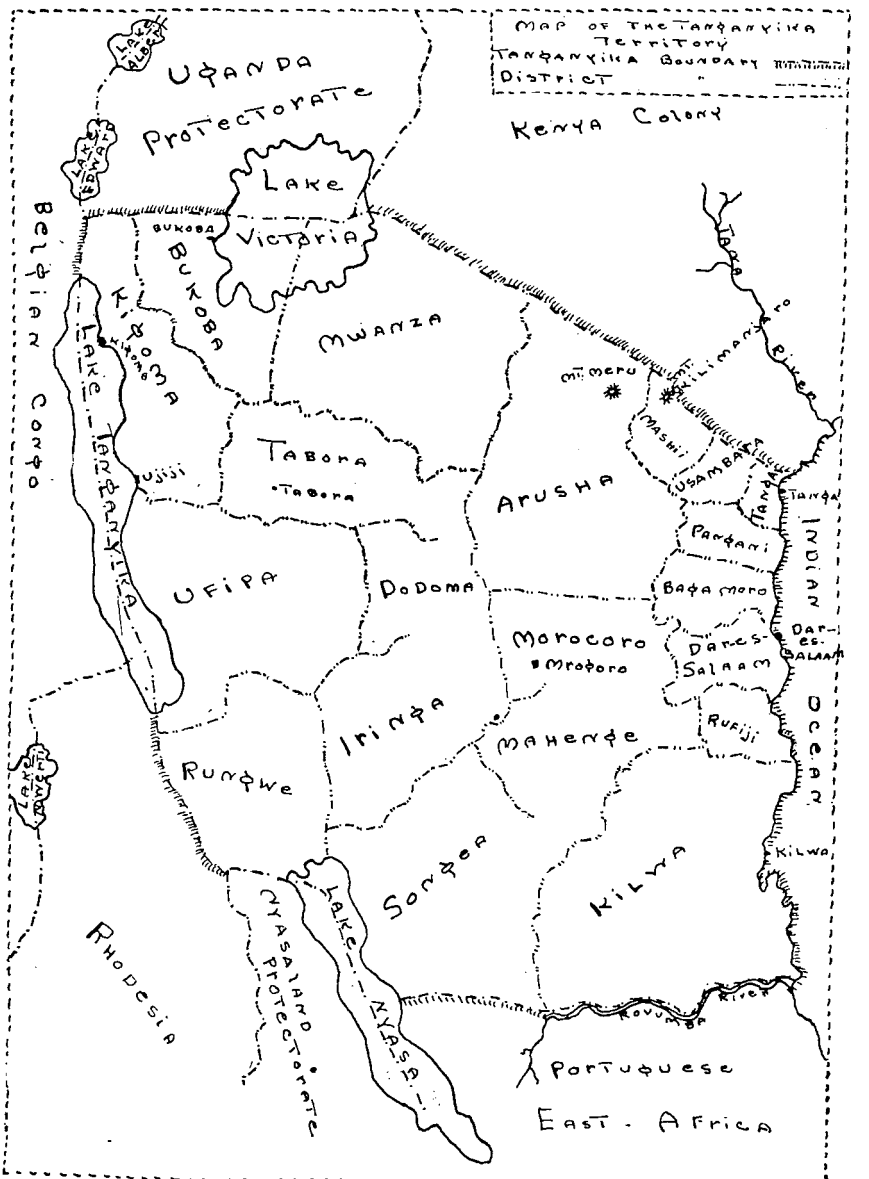
When the World War broke out in 1914, the Germans in Kamerun feared that just such a native outbreak would occur. They therefore cruelly massacred many of the indigenes, including several prominent native chieftains. The British and French expeditionary forces, however, were in complete control of the colony as early as February, 1916.[78] By the Anglo-French Declaration of July 10th, 1919, the territory was divided into two mandated areas, France and Britain being the two Mandatory Powers.[79] As such it continues today. The burden of the work of administration in the British Cameroons, however, falls upon the government of the neighboring colony of Nigeria.[80]

## 4. THE TANGANYIKA TERRITORY

### (a) PHYSIOGRAPHICAL CHARACTERISTICS

The Tanganyika Territory, or British East Africa, is by far the most important of the four mandates administered under British power in Africa. It consists of that portion of the former colony of German East Africa which the Principal Allied and Associated Powers agreed should be administered as a mandate by His Britannic Majesty. For the sake of brevity, it may be said that the territory is bounded on the north by Kenya and Uganda, on the west by the Belgian mandate of Ruanda-Urundi and Lake Tanganyika, on the southwest by Northern Rhodesia

[74] REPORT FOR 1922, p. 47.
[75] IDEM.
[76] HANDBOOK, pp. 17-24.
[77] IBID., p. 21.
[78] IBID., pp. 24-25.
[79] C. 449 (1) c. M. 345 (c). 1922. VI. BRITISH MANDATE FOR THE CAMEROONS, p. 3.
[80] REPORT FOR 1922, pp. 1-5.




THE TANGANYIKA TERRITORY

(Adapted from REPORT ON TANGANYIKA for 1928)

and the Nyasaland Protectorate, on the south by Portuguese Mozambique, and on the east by the Indian Ocean.[81] Its area is approximately 374,085 square miles, this including about 20,000 square miles of water.[82]

The surface of Tanganyika is unusually varied. Along the coast there lies a plain, from ten to forty miles in width, to the rear of which the country gradually rises to a plateau, which constitutes the greater portion of the interior. This plateau drops from a general level of 4,000 feet to the levels of Lakes Tanganyika and Victoria, some 1,500 to 2,000 feet lower. It is in the northeastern areas that one finds the highest points in the territory, encountering there the extinct volcanoes of Mount Kilimanjaro, which reaches to a point 19,720 feet above sea level, and Mount Meru, which attains an altitude of 14,960 feet. To the southwest are the Livingstone Mountains, in which the highest peak is some 9,000 feet in elevation.[83] Jungles typical of the tropics cover much of Tanganyika.

The coast-line is approximately 500 miles in length, extending from the Umba river in the north to the Rovuma river in the south. Its shelving character, the presence of numerous coral reefs, and the changing bars at the mouths of the rivers make approach to it difficult. Tanga and Dar-es-Salaam, however, have really good harbors.[84]

The principal constituents of the river system of the region are the Rufiyi, which drains about twenty-five per cent of the entire territory, the Rovuma, the Pangani, the Wami, the Kagera, the Mlagarazi, and the Ruhuhu. There also occur several lakes, of which the three of primary importance are Lake Victoria Nyanza, the largest lake in Africa, Lake Tanganyika, the second largest, and Lake Nyasa, which ranks third.[85]

The climate of Tanganyika is influenced to a considerable extent by the position of the territory with regard to the warm Indian Ocean.[86] The region may be divided into four climatic

[81] REPORT ON THE TANGANYIKA TERRITORY (hereinafter cited as REPORT) FOR 1924, p. 3.
[82] IBID., p. 4.
[83] IDEM.
[84] Peace Handbook No. 113, TANGANYIKA, (hereinafter cited as HANDBOOK), p. 8.
[85] IBID.,pp. 8-11.
[86] IBID., p. 11.

zones.[87] The first of these is the warm and somewhat damp coastal region with the hinterland which adjoins it, its elevation being not over 300 feet. Here the average yearly temperature is 78° F. In the second place, there is the hot and moderately dry zone between the coast and the central plateau, varying in elevation from 300 to 2,000 feet. The average yearly temperature in this area is somewhat lower than it is nearer the coast. In the third place, there is the hot and dry district of the central plateau, this being between 2,000 and 4,000 feet in height. Here the average temperature is about 70° F., with great daily and yearly variations. Finally, in the fourth place, there are the semi-temperate regions around the slopes of Kilimanjaro and Meru and the mountains of the south, the altitude ranging from 5,000 to 10,000 feet. In these places there are fairly low yearly temperatures, with, however, great extremes.[88]

Each year brings two well-defined rainy seasons. As a general rule, the long rains begin in February or March, and continue for two or three months, while the short rainy season extends from October to November. Yet for a tropical country the amount of rainfall is low,[89] and as a result, in some years great droughts have occurred.[90]

### (b) Social and Economic Aspects

The Bantu peoples constitute the foundation of the racial composition of the population of Tanganyika. To them have been added the invading tribes of the Wahimas, a pastoral people of Hamitic race; the Masais, who even today are a warlike, nomadically inclined people; the Wangonis, of Zulu stock; and the Arab-Swahilis, the latter being those natives who show in blood and characteristics the influence of Arab and Mohammedan civilization.[91]

In 1928, the native population was estimated as being 4,735,000.[92] The following table indicates the manner in which it was distributed among the various provinces of the territory:[93]

[87] Report for 1926, p. 65.
[88] Handbook, pp. 13-14.
[89] Report for 1926, p. 65.
[90] Handbook, p. 11.
[91] Ibid., pp. 16-18.
[92] Report for 1928, p. 7.
[93] Ibid., p. 9.

| Province | Area in Square Miles | Estimated Population |
|---|---|---|
| Mwanza | 25,530 | 798,000 |
| Bukoba | 11,010 | 348,000 |
| Tabora | 40,230 | 533,000 |
| Kigoma | 48,345 | 290,000 |
| Iringa | 41,450 | 413,000 |
| Mahenge | 32,730 | 197,000 |
| Lindi | 38,910 | 357,000 |
| Eastern | 27,320 | 519,000 |
| Central | 38,770 | 607,000 |
| Tanga | 13,863 | 349,000 |
| Northern | 33,770 | 324,000 |
| | 349,928 | 4,735,000 |

There were also present in 1928 some 31,000 non-natives, about 6,000 of these being Europeans, with the majority of the remainder coming from Asia and northern Africa.[94]

The Tanganyika Territory differs from the other mandated regions of Africa in that it contains some rather large towns. Of these the chief is Dar-es-Salaam, founded by the Sultan of Zanzibar in 1862. It is the seat of government, has a population of 35,000, and is a solid and well designed town. Second in importance is Tanga, to the north of Dar-es-Salaam. Other seaports are Pangani, Kilwa, and Lindi. Tabora, situated at the junction of two of the principal caravan routes within Tanganyika, is the most important inland town, having a population of 25,000. Other inland towns are Moshi and Arusha in the north, Morogoro, Kilosa, and Dodoma in the central region, Iringa and Mahenge to the south, Bukoba on Lake Victoria, Kigoma and Ujiji on Lake Tanganyika, and Mwaya on Lake Nyasa.[95]

Among the agricultural products of this area are numbered sorghum, rice, coffee, cocoa, sweet potatoes, spices, tobacco, cotton, hemp, oil palms, coconut palms, rubber, and various fruits.[96] The livestock industry is very firmly established in the northwest, although the presence of the tsetse fly prevents its growth in other districts. Cattle, sheep, goats, and hogs are raised, hides and skins being the chief animal products.[97]

[94] IBID., p. 7.
[95] IBID., p. 5.
[96] HANDBOOK, pp. 62-71.
[97] IBID., pp. 72-75.

Tanganyika has several very valuable mineral deposits, there being found here gold, iron ore, mica, copper, lead, silver, potash, coal, and precious stones. The gold deposits are probably of the most importance.[98]

Native manufacturing has been confined largely to the production of pottery, iron work, ornaments, mats and baskets, wood carvings, oil products, soap, and salt. Non-natives, however, have produced furniture, cement, roofing-tile, soap, and glass. The foreign element in the territory also includes some workers in ivory and wood.[99]

(c) THE POLITICAL HISTORY OF THE TANGANYIKA TERRITORY

In the sixteenth century Tanganyika, like all East Africa, was under the influence of the Portuguese. A fort was built at Kilwa in 1505, but was soon abandoned, the region then falling under the rule of the Arabs under the Sultan of Zanzibar. This state of affairs continued until 1884, when Dr. Karl Peters, in the interest of the German nation, which had hitherto been represented only by missionaries and traders, entered the Usagara highlands, and obtained numerous treaties giving extensive rights and privileges to a German Colonization Society. The German government, over the protests of the Sultan of Zanzibar, then granted to this Society dominion over that vast area between the state of Zanzibar and Lake Tanganyika.[100]

A boundary having been drawn between the British and the German spheres of influence in this region by an agreement in 1886, the German East African Association obtained a charter in 1887. In the following year it took over the administration of what now constitutes the coastal belt of Tanganyika. Native resentment, expressing itself in frequent uprisings, prevented the successful administration of the territory by this company; consequently, on October 22nd, 1889, the German government proclaimed the existence of an Imperial Protectorate. A competent military force soon reduced the natives to submission. Strange as it may seem, the Sultan of Zanzibar was then granted an indemnity to compensate him for the loss of this area.[101]

Material development was made under the new government, railway systems being built and harbors improved. Yet there

[98] IBID., pp. 80-82.
[99] IBID., pp. 82-83.
[100] IBID., pp. 24-28.
[101] IBID., pp. 30-32.

was much native opposition to German rule, due to the general harshness of the administration.[102] The most important uprising was that which began near Kilwa in 1905, spreading rapidly over the entire southern end of the colony. Sir Harry Johnston estimated that 120,000 persons died at this time, either in actual conflict, from guerilla warfare, or from the famine which ensued.[103]

A very large proportion of the actual fighting which occurred between the Allies and the Central Powers in Africa during the World War took place in Tanganyika. However, the district was soon taken by the Allies. At the close of the War, His Britannic Majesty agreed to accept the responsibility for the administration of the former German colony under mandate. The Council of the League of Nations, on July 20th, 1922, thereupon set forth the terms of the British Mandate for East Africa, thus definitely bringing Tanganyika into its present political status.[104]

## 5. SOUTH-WEST AFRICA

### (a) PHYSIOGRAPHICAL CHARACTERISTICS

The territory of South-West Africa, which was formerly known as German South-West Africa, is bounded on the north by Angola and Northern Rhodesia, on the south by the Orange river and the Cape Province, on the east by British Bechuanaland and a portion of the Cape Province, and on the west by the Atlantic Ocean. It has an area of some 322,000 square miles.[105]

On the west there is a coastal strip, in general an unbroken desert region, which rises gradually to a plateau some 3,000 to 5,000 feet in elevation. Behind this plateau, in which one encounters extensive grass plains and a few isolated mountains, there is the region of the Kalahari desert, consisting largely of sand dunes.[106] Toward the eastern border, in the vicinity of the Orange river, the characteristics of the country vary from

[102] IBID., p. 34.

[103] Johnston, H. H., THE COLONISATION OF AFRICA, p. 413. Quoted in HANDBOOK, p. 35.

[104] C. 449 (1) a. M. 345 (a). 1922. VI. BRITISH MANDATE FOR EAST AFRICA, p. 6.

[105] OFFICIAL YEAR BOOK OF THE UNION OF SOUTH AFRICA, No. 6, (hereinafter cited as YEAR BOOK), p. 982.

[106] Peace Handbook No. 112, SOUTH-WEST AFRICA, (hereinafter cited as HANDBOOK), pp. 2-3.

grassy to wooded plains, which then merge into a region of dense bush.[107]

On the low coast-line, some 830 miles in length, the only harbors of any importance are Walvisch Bay and Luderitz Bay. Even in these, landing facilities are at present poor, though they could be improved quite easily.[108]

With the exception of the Kunene and the Okavango rivers in the northern boundary, and the Orange river in the southern, there are practically no streams which carry surface water during the entire year.[109] Among the other rivers in the territory are the Kuiseb, the Swakop, the Konkip, the Hom, and the Ugab.[110]

Although the north and the northeast are rather hot, the climate as a whole is temperate rather than tropical. Taking into consideration the different altitudes of the various parts of the country, the average yearly temperature appears to be about 64° F.[111] The yearly precipitation varies from about an inch along the coastal belt to six inches in the south, about twelve in the central regions, and twenty-two in the north.[112] The dry season usually extends from November until April.[113]

### (b) Social and Economic Aspects

The chief native races in South-West Africa are the Bantu, the Hottentot, and the Berg-Damara.[114] According to the census of May, 1921, there were in the territory 177,462 indigenes and 50,207 non-natives, 19,432 of these being Europeans. The chief town is Windhoek, the seat of government, with a population of approximately 8,000.[115]

The scarcity of water makes the cultivation of agricultural products difficult. There are grown, however, some maize, potatoes, tobacco, sorghum, melons, beans, fruit, and vegetables.[116]

[107] Year Book, p. 983.
[108] Handbook, p. 4.
[109] Year Book, p. 983.
[110] Handbook, p. 4.
[111] Ibid., pp. 5-6.
[112] Year Book, p. 983.
[113] Handbook, p. 5.
[114] Ibid., p. 7.
[115] Year Book, p. 984.
[116] Handbook, p. 47.

SOUTH-WEST AFRICA

(Adapted from REPORT ON SOUTH-WEST AFRICA for 1919-1920)

The country is primarily a pastoral one, hundreds of thousands of cattle, sheep, and goats being raised each year.[117]

The territory is rich in mineral resources, having valuable deposits of diamonds, copper, tin, gold, coal, and iron.[118] In the year 1922 alone, diamonds to the value of approximately four million dollars were exported.[119]

Manufacturing has come to play quite a large part in the economic life of South-West Africa. The leading industries, in all of which natives are employed to some extent, are the manufacture of glass, the extraction of building-stones, wood-carving, and the construction of vehicles. In 1922 alone, the output of the manufacturing industries was valued at approximately two million dollars.[120]

### (c) The Political History of South-West Africa

The coast of South-West Africa was discovered by the Portuguese in 1482, but, as has been seen to have been the case in the other mandated areas, they made no attempt to establish a settlement. About 1685 the Dutch governor of the Cape of Good Hope sent expeditions into this region; and some missionaries who went remained in it for a few years. The first permanent settlement, however, was that made by the Rhenish missionaries from Berlin about 1842, near Bethany.[121]

On the recommendation of Sir Bartle Frere, the Governor of Cape Colony and High Commissioner for South Africa, Walvisch Bay and its surrounding territory were annexed by the British in 1878. Early in 1883, the German government informed the British that a German merchant was about to establish a factory on the coast to the north of the Orange river, requesting that British protection be given him, if British sovereignty extended over that region by reason of its proximity to territories which had been declared to be British. It was further asserted that if such protection were not forthcoming, the German government would itself provide it. In July, 1883, the proposed settlement was founded at Angra Pequena by an agent of Luderitz, the merchant.[122] No affirmative reply being received from the British government as to the extent of its

[117] Year Book, p. 1000.
[118] Handbook, pp. 66-80.
[119] Year Book, p. 1003.
[120] Ibid., p. 1006.
[121] Handbook, pp. 9-10.
[122] Ibid., pp. 11-12.

sovereignty in that area, a German Protectorate was formally declared on April 24th, 1884.[123] Luderitz then extended the territory through purchase and treaties with the native tribes. From 1885 until 1892 the colony was under the administration of the German South-West African Colonial Society, which had acquired the rights of Luderitz. In 1892, however, an Imperial Commissioner was appointed to take charge of the government.[124]

The most important event to occur during the German administration of South-West Africa was the Herero uprising which took place early in 1904. War was formally declared against the Germans, who were for a time in extreme danger of defeat. Upon the arrival of reinforcements, however, they soon conquered the natives, the entire Herero tribe being practically exterminated.[125]

German South-West Africa was occupied by the allied troops early in the World War, the colony being under complete subjugation by the middle of July, 1915. At the close of the war, it was conferred on His Britannic Majesty as a mandate, and was assigned to the Union of South Africa for administration. It should be noted that this is the only "C" mandate which is discussed in this volume.[126]

## 6. PREPARATIONS FOR THE STUDY NOW COMPLETE

Such are the fundamental physiographical, ethnological, and historical facts with regard to the African mandates of the British Commonwealth. A reader to whom these essentials were unknown could not have hoped to achieve the utmost understanding and appreciation of the problems arising in these territories. Having perused the foregoing data, however, he is now ready for the consideration of the first phase of the land problem, this being the subect of the native systems of land tenure.

[123] YEAR BOOK, p. 982.

[124] HANDBOOK, pp. 13-14.

[125] IBID., pp. 14-16.

[126] In view of the many works which have appeared on the mandatory system, it has not been considered necessary to dwell upon the various classifications of the mandates. It is assumed that the reader understands that in the "B" mandates, (in this volume British Togoland, British Cameroons, and Tanganyika), the Mandatory Power "must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals." On the other hand, it is considered that the "C" mandates can best be administered as integral portions of the territory of the Mandatory Power.

CHAPTER THREE

# THE NATIVE SYSTEMS OF LAND TENURE

## 1. EUROPEAN AND NATIVE CONCEPTIONS OF OWNERSHIP AND TENURE OF LAND

There can be little doubt that the fundamental reason for the existence of the land problem in the African mandates of the British Commonwealth today, indeed the underlying source of this question throughout the entire continent of Africa, is the total incompatibility of the conceptions held by Europeans and by natives as to the ownership and tenure of land. The reader is of course familiar with the European system of private ownership, accepted throughout the civilized world. In the days of the old manorial system, all the land was conceived as being the property of the lord of the manor, being granted by him to tenants and escheating to him on their death or dispossession. Life estates were often granted, but with the passing of the years these have come to be practically unknown. The general European conception at present recognizes the individual ownership of land, it now being held in fee simple estates, under which system it is the property of the owner to have and to hold forever. The right of his heirs to inherit it is of course established.

Far different from this is the conception of the African native with regard to the ownership of land. To the aboriginal African the sun, the water, and the land constitute one single element, a fundamental component of African social and economic life, with its greatest object the provision of human sustenance. These three are so interdependent that the alienation of the land would horrify the indigenous people equally as much as would the alienation and sale of the water or of the sun.[1]

The African sees all land as vested in the tribe, its disposal being in the hands of the chief, who may allot it either to families who have outgrown their family lands, or to strangers who desire to settle among the tribe, provided, of course, that such strangers have paid the customary tribute and dues.[2] In times

[1] Harris, John H., AFRICA: SLAVE OR FREE? Part III, chap. i., p. 107.

[2] Lugard, Sir Frederick D., THE DUAL MANDATE IN BRITISH TROPICAL AFRICA, chap. xiv., p. 284.

past, the immense extent of land available for such grants as a general rule prevented much strife concerning the possession of the land by natives, who used the holdings given them as gardens, cattle stations, and hunting stations, all finally developing into the native farm. At all times, however, the men of the community had to hold themselves in readiness to go to the defense of their town and tribe; and their every journey had to be made with the express permission of the chief.[3] Almost universally, to the mind of the native the sale of the land is abhorrent, a totally unthinkable act. From time immemorial this land has been held by the tribe, and by family groups within the tribe, the members of these family groups, being, throughout West Africa, such persons as can trace their descent through one maternal ancestress, succession running through the female line.[4]

> But such succession does not imply that the successor, as the head of the family for the time being, has vested in him the right of ownership to the exclusion of the other members of the family. He is, indeed, a co-owner with the rest; and so jealously do the members of the family restrict him to a legitimate use of his position that the slightest trespass on their rights entails deposition. Theirs is the right to nominate to the headship of the family. Theirs is the right to depose from such headship; and no act of the head for the time being is valid without the consent and concurrence of the members of the family, nor is his permission necessary in the enjoyment of the family land.[5]

There are two outstanding features of the native character which complicate the problem. The first of these is the intense local attachment to his home and neighborhood which the native has. It has often been the home of his fathers before him, and it is in it that there are found the roots of subsistence of his people. On the land he lives in his ancestors, being far happier, far more moral, and in a far more natural state here than at any other place. The second of these characteristics is the childlike procrastination which the native exhibits with regard to a troublesome question. If he is in debt, he will gladly incur further

[3] Mackenzie, John, AUSTRAL AFRICA, Vol. II, Book VI, chap. iv., p. 486.
[4] Hayford, Casely, THE TRUTH ABOUT THE WEST AFRICAN LAND QUESTION, chap. v., p. 52.
[5] IBID., p. 53.

liability, rather than face an immediate settlement. Both of these features work to his disadvantage in the land question.[6]

According to Sir Frederick D. Lugard, one of the leading Englishmen in African affairs for many years, African land tenure is not "communal," if one interprets that term in the sense of tenure in common; but it is rather an individual tenure of land which is derived from the common stock at the disposal of the tribe or family.[7] The same scholar gives his conclusions with regard to African land tenure in the following words:

> It is not easy to focus into a paragraph a general conception of African land tenure. The general principles would seem to be that the assignment of land to the individual is entrusted to tribal or family authorities, in whom is vested the control of common grazing lands and forests; that every individual has a right to a share in the use of the land, and holds it in perpetuity, subject to the performance of tribal obligations, but may not alienate it; that these principles are held more tenaciously by the forest tribes than by those further north, where, in some cases, it is the representative of the earth-god who assigns the land, in others an individual chief, while pastoral nomads are indifferent to questions of land ownership and value grazing rights only. The forest tribes jealously maintain that all unoccupied land belongs to some community or other, while the northern tribes are less insistent on such claims. All alike recognize the right of the conqueror to dispose of the land. The inevitable tendency to individual ownership is meanwhile constantly asserting itself, with the evolution of the tribe, and is fostered by pressure of population, by foreign example, and by the replacement of annual by permanent crops.[8]

The South African Native Races Committee, writing some twenty-five years earlier, made the following comment on native tenure:

> The tribal tenure of land, knit up as it is with the personal relation of the landholder, on the one hand to the chief, and on the other hand as head of his family to its subordinate members, is not a progressive system. And it has always been the object of colonial governments ultimately and as soon as possible to substitute some form of individual holding. If successfully established, the advantages

[6] Evans, Maurice S., BLACK AND WHITE IN SOUTH EAST AFRICA, chap. v., p. 139.

[7] Lugard, Sir Frederick D., *op. cit.*, chap. xiv., p. 285.

[8] IBID., p. 287.

at first sight seem to be numerous. The natives might more speedily lose their almost nomadic restlessness under difficulties, if some idea could be instilled into them of the real value of a permanent holding of land, and of the labour they year by year expend on it. Fixity of tenure, moreover, is necessary to induce them to put more energy into the cultivation and irrigation of their plots. A higher class of cultivation and irrigation would go some way towards meeting the growing needs of a rapidly increasing population. Ploughs are said to have brought more land under cultivation; but the native mind is slow to move, and their conservatism in this instance has been supported by the chiefs, who are naturally reluctant to further weaken their influence by the introduction into the tribe of so revolutionary a change as private ownership of land.[9]

Mr. Maurice S. Evans, an outstanding writer and sociologist, shows clearly in the following contrast just what the advent of European adventurers and immigrants, who brought with them their conception of ownership, has done to native tenure:

> In the early days of South East Africa, and I speak more particularly of Natal proper, there was abundance of land and wide scope for black and white alike.
>
> In those days it was the common phrase among colonists in speaking of the natives to say that no people on earth were so well off or so happy. Cattle in abundance, hill and dale on which to graze, the choice of the land for their gardens, wants that a few days' labour would supply. The attention of the newcomer was directed to the files of comely girls and stalwart young men going to dance or festival, singing as they went; to the abundance of food and beer; to the wealth in stock and the ample leisure the native had in which to enjoy it all. These early years of the white man's government were idyllic days for the black man; his old life was not interfered with, most of his old interests remained; his pleasurable activities were not curtailed; he dwelt in security; and had, what is essential to ensure these happy results, the full use of broad lands for pasture and cultivation. It is significant that this form of address, this statement of fact, is seldom heard in these later days; the least observant of Europeans feels that a change has come over the life of the native since that time. Now one hears more of their laziness, their disregard of contracts and obligations, the best methods of inducing or compelling them to furnish reliable and continuous labour; but little of their

[9] South African Native Races Committee, THE NATIVES OF SOUTH AFRICA, chap. v., p. 73.

happiness, little of the content which, in the past days, was generally admitted filled their lives . . . The position was idyllic, and had it so remained there would have been no native problem as we know it today.[10]

How vastly different is his picture of the effect of the growth of the white population!

> But the white man as well as the native increased in the land. Newcomers arrived from oversea inspired with new ideas foreign to those held by the old settlers. The easy-going methods of the latter were arraigned and condemned. The apostles of progress demanded that fuller use be made of the fertile land, that ground simply used for grazing should be broken up and cultivated, and varied crops grown for market. They scouted the uneconomic but pleasant practice of trekking from summer to winter veldt, and advocated that men should remain all the year round on their farms, growing winter food for their stock, and utilizing the whole according to modern ideas in vogue elsewhere. Land-hunger swept over the country, and the government was pressed to throw open the Crown lands to survey and allotment for whites, and to charge a rent to the natives remaining on the unappropriated balance, the demand being that, finally, all should pass into the private possession of the white man, and the native lands be confined to those already allotted as locations. The men who lived in the old way were denounced as being backward and unprogressive, and comparisons were constantly made to their disadvantage, with those who held the land in more progressive countries. As might be expected, the new ideas prevailed; fences enclosed the wide open country; grazing areas came under the plough; many new crops demanding much labour, such as wattles, were planted; improved stock was imported; and the Crown lands given out as private farms, all profoundly altering the position of the native on his land.
>
> Instead of having the run of the farm for his cattle and goats he was fenced into the least valuable portion; his garden ground was limited and allotted to him; in place of the old patriarchal relations in which no cash passed, a heifer or a few goats being recognition of his services, he was charged rent; and a money payment was given for his labour. Failing fulfilment of his contract, the law interposed and he was evicted. The change came gradually; he generally had some time in which to adjust himself to the new conditions; yet not seldom the white man, stirred by the racial instinct for development and economic progress, and fanned by emulation, made it the guiding principle of his

[10] Evans, Maurice S., *op. cit.*, chap. v., pp. 126-128.

> life, and the native, at a loss to comprehend, was rushed along, vainly attempting to adjust himself as the resistless whirl carried him along with it.[11]

Surely it can be truly said that there is nothing which more readily shows the vast difference between the black and the white races than do their respective views on the question of land. The black man is entirely happy with the right of usufruct of land which belongs to the community; but the white is satisfied only when the land is entirely his, with the right to have and to hold against all comers for all time.

A gleam in the darkness of the economic relations of the two races is found in the following comment on the attitude which the British government has held toward the question of native ownership:

> The rule of the law of nations according to which aborigines have only a personal right of occupying the land inhabited by the tribes to which they belong, subject to the right of the State exercising the sovereignty to restrict them to lands which it sets apart and reserves for them, suitable for them as agriculturists, necessarily gives the aborigines an inferior station with respect to the colonists and exposes them to being cheated out of their lands by malevolent Europeans. To avoid this situation and this possibility, a practice has recently been put into operation in some of the British colonies by which the British Government grants all land on lease, reserving a rental, so that all transfers of land are subject to its sanction as general landlord. The aborigines are thus protected and the formation of monopolistic holdings is prevented. The land rental being paid by the colonists and the aborigines alike, there results a just division of the expenses of government between the two elements of the population.[12]

## 2. SYSTEMS OF TENURE IN BRITISH TOGOLAND

### (a) In the North

Fulfilling the terms under which the mandate was conferred, the administration in British Togoland upholds the system of land tenure existing under customary native laws, recognizing its legality. Long usage is the sole reason for the acceptance of

[11] Ibid., pp. 128-129.

[12] Snow, A. H., The Question of Aborigines in the Law and Practice of Nations, p. 128.

this system as a firm precedent with powerful legal force, there being no written law to serve as a foundation for native tenure.[13]

In the north of British Togoland, among the tribes of Yendi and those which are related to them in the Kratchi district, the original dominion in land is vested in the religious heads rather than in the political chieftains. Such religious leaders are designated as "Tindana," this term meaning "owners of the land."[14] The natives in this region associate all land with a deity, believed to dwell in the land, his presence therefore inspiring awe and reverence and checking illegitimate occupation. Before any grant can be made, this deity has to be propitiated by his high priests; consequently, tithes are paid to them in the form of guinea corn or millet, which they exchange for sheep or cows to be sacrificed to the deity on fetish days.[15] Although this idea is now gradually passing away, and the coming of the political chiefs has caused a gradual decline in the authority of the high priests as the distributors of land, the Tindana are nevertheless still powerful. The ownership and occupational right of land once given by them passes in perpetuity.[16]

There exist both collective ownership of land by families, and individual ownership by different members of those families. Such individuals, however, must not allow these private enterprises to interfere with the satisfaction of their obligations toward the family land. Permanent occupation and individual ownership have developed largely as a result of the quality of the soil, which demands continuous cultivation.[17]

On the death of the head of a family, the family land passes to the oldest male in the male line. Any private property which the deceased may have had goes to his sons, or, failing them, to his brothers.[18] Custom makes the sale of land unknown and unthinkable, although it is not entirely prohibited by native law. Lease, however, is permissible, but re-entry may be made by the lessor at his pleasure. Sub-letting by the lessee is forbidden.[19]

[13] REPORT ON THE ADMINISTRATION OF THE BRITISH MANDATED SPHERE OF TOGOLAND (hereinafter cited as REPORT) FOR 1924, p. 38.
[14] REPORT FOR 1920, p. 20.
[15] REPORT FOR 1923, p. 33.
[16] REPORT FOR 1925, p. 81.
[17] REPORT FOR 1920, p. 20.
[18] REPORT FOR 1925, p. 81.
[19] REPORT FOR 1920, p. 20.

In the extreme northern portion of the British Sphere, there lives the Kusasi tribe, in which the chief is in charge of all the land, acting as a trustee for the interests of his people. The leasing of land to a family is done by verbal agreement with the chief; and the lessee gains the right to live on and cultivate the land so long as it remains in occupation thereof, and does not die out or migrate. In case the family does not continue in occupation of the land, however, the grant reverts to the chief, who may then re-allot it. A stranger may be given land by the head of the tribe to be used during the period of his residence within the chiefdom; but unless a special agreement is made, it is not customary for the holding to pass to his successors. In all cases such as this, the chief consults the fetish before leasing the land. In general, no money is paid to the chief for the use of the land; but it is customary for the lessee, after the completion of his house, to make the head of the tribe some present in recognition of the debt.[20]

(b) IN THE SOUTH

In the southern portion of the mandated sphere, the forms of land tenure existing may be classified into four categories, these corresponding in general to the different types of proprietorship.

In the first place, there are the tribal lands, acquired by right of discovery and settlement or by conquest, and constituting the common property of the tribe. The chief of the tribe and his elders, or councilmen, act as guardians of the land for the entire group. According to ancient custom, any member of the tribe may settle on any unoccupied portion of this land, the chief exercising seigniorial rights over such unoccupied land as is owned by no clan or family. A community, family, or individual of another tribe can receive a grant of this land from the chief and his elders; but it is customary for a payment to be made for such a privilege. This payment is usually in money; later, as a rule, a portion of the crops grown is also presented. These settlers are liable to dispossession at all times, for they obtain no *de jure* title to the land. But such action is rarely taken, and the settler gains virtually the right of occupation in perpetuity.[21]

[20] REPORT FOR 1926, p. 51.
[21] REPORT FOR 1925, p. 82.

In the second place, there are the Stool lands, which are set aside for the maintenance of the Stool, the land being vested in the chief of the tribe, who is the occupant of the Stool.[22] With the consent of his elders, the chief may lease, mortgage, or alienate Stool land, provided that such action is for the benefit of the Stool. Any person who desires to cultivate Stool land or to fish in Stool waters must pay a rent to the chief of the tribe. The entire membership of the tribe is entitled to permission to cultivate such land, however, and to build upon it; and even strangers are allowed to farm it. While the usual consideration for such a grant is in the form of money or barter, a share of the produce of the land is often also required. These leases of Stool land are for an indeterminate period. However, in the event of the assertion by the grantor of a claim over a holding, it must be forfeited to the occupant of the Stool.[23]

As a rule, of course, the family of the chief is the most important and influential in the tribe; and, in general, the land acquired by it is of considerable extent. Being the official head of his family as well as the occupant of the Stool, the chief is the custodian of this family land; and in this sense it might be spoken of as Stool land. Ordinarily, however, a distinction is drawn between this land and Stool land proper.[24]

In the third place, there are the family lands, which, as the name implies, are tracts owned by families, dominion being vested in the senior member of the group,[25] with every member, male and female, having working and usufructuary rights. The head of the family allots the land; and if the individual receiving a grant meets his obligations toward the family and the tribe, his tenure on this plot is secure.[26] The private ownership of trees on family land is allowed, they being the personal property of the individual who plants them; so far as the ground itself is concerned, however, the presence of his trees gives him no extra rights as against the other members of the family.[27] Trees already on the land are regarded as being the property of the head

[22] REPORT FOR 1922, p. 17.
[23] REPORT FOR 1925, p. 82.
[24] IDEM.
[25] REPORT FOR 1922, p. 17.
[26] REPORT FOR 1925, p. 82.
[27] REPORT FOR 1920, p. 20.

of the family; yet if any individual cultivates them, he enjoys usufructuary privileges.[28]

The mortgaging of land is rapidly dying out, although it was extensively practised in the past. Under native law, the mortgagor can re-enter at any time by paying off the loan.

> Instances have occurred when land mortgaged as far back as the last Ashanti invasion in 1868 remained unclaimed until quite recently when a member of the mortgagor's family suddenly woke up to the fact that the land had become of considerable commercial value, owing to the mortgagee and his family having cultivated and raised cocoa plantations thereon. It is not uncommon for any member of the mortgagor's family to appear before the District Commissioner to reclaim the land as it stands, and offering to refund the price of the original loan, at the same time demanding the inclusion of the crops and buildings.[29]

In the past, the sale of family land, which can be effected only with the consent of all members of the family, was extremely rare, being resorted to, in general, only when the family was indebted and could raise money in no other way. Of recent years, however, sale has become more common. The growing desire for individual ownership, due primarily to the rapid development of the cocoa industry, probably has been the principal reason for the increasing number of such sales. Families willing to dispose of their lands in order to satisfy monetary embarrassments have no difficulty in finding a buyer.[30] Land purchased in this manner becomes private property, and may be inherited by the oldest son of the purchaser. After that, it becomes family property, and passes first to the brother of the deceased head of the family, and then to his eldest son.[31]

In the fourth place, there are the individual lands, which may be acquired by grant from the chief and his councilmen, or by gift, prescription being unknown. In the event that the individual holds land as a grant from the chief, he is usually required to donate part of his crops or to render services to that chief. In return for this, however, the grantee secures what is practically a permanent title. If he has obtained the land for the purpose of building on it and allows the building to fall into

[28] REPORT FOR 1922, p. 17.
[29] REPORT FOR 1925, pp. 82-83.
[30] IBID., p. 82.
[31] REPORT FOR 1920, p. 20.

ruins, or if he disputes the title of the grantor, his grant *ipso facto* terminates, the land reverting to the grantor or his representative.[32]

Any individual of alien tribe may lay out a farm. All that seems to be necessary is that such a person, through the presentation of gifts to the owner, shall insure himself of the right to use the ground. He does not thereby gain ownership, however, dominion in the land remaining vested in the original owner, who, despite the fact that the occupant may plant whatever crops he chooses, has free access to the land at all times.[33]

### (c) The System in General

In summary, it may be said that the prevailing form of native land tenure in British Togoland is one which is essentially communal, operating therefore to make the soil, which the native conceives as the gift of the gods for the production of his sustenance, accessible to all for the raising of the necessary food crops.[34] The native, however, is fully alive to the fact that his land today is of far greater commercial value than ever before.[35]

## 3. SYSTEMS OF TENURE IN THE BRITISH CAMEROONS

### (a) In the Emirate of Dikwa

The question of land tenure in the Emirate of Dikwa presents several features worthy of comment. In the first place, it is admitted by the Muslims that the proprietary rights over land are vested in the ruler of the state, the Sheikh. On the other hand, however, there exists a markedly individualistic system of tenure over farm land, probably resulting to some extent from the large Arab immigration to an area in which very grandiose claims had been made, and quite often sustained, by the headmen of the older towns.[36] It is interesting to observe the presence even now of conceptions which arose under political conditions which have long been changed. The headmen, or the "mai," of

[32] Report for 1925, p. 83.
[33] Report for 1920, p. 20.
[34] Report for 1924, p. 38.
[35] Report for 1925, p. 83.
[36] Report on the British Sphere of the Cameroons (hereinafter cited as Report) for 1922, p. 22.

the five old towns of the So, rulers of the region some 1000 years ago, still plead the rights of their ancestors over the land as a legal title, in spite of the fact that these rights are at present almost, if not altogether, a thing of the past. Certainly the mai use them in an attempt to secure favorable decisions from the Sheikh, pleading that although dispossessed, they are the hereditary lords of the soil.[37]

If a farmer has full rights to his land, he may sell, let, or grant away those rights. In the event of his death, both the strict Muslim laws of inheritance and local customs with regard to family possessions are influential in determining the heir to his property.[38]

> Examples are more illuminating than theories . . . He may absent himself, for example, on the pilgrimage, and on his return claim his land; if his absence had been very long some sort of prescription would be pleaded in refusal, but he would still have the right of appealing to the head of the state, the Sheikh, not to the courts, for a fair decision on the facts. On his death male heirs succeed. Should the land not be strictly divided and the senior male heir attempt to sell, let, etc., his rights, apparently the other heirs could demand a division and he could only sell his own rights subject to the Sheikh's rule. Should the heirs be absent on an owner's death, they could yet claim their inheritance on their return from absence if not too prolonged.[39]

The headman in a native village has not only his family land, but also an official farm. Too, in the smaller hamlets, the land on which the village stands is under the control of this officer. He is also in charge of unoccupied lands, making grants of bush land as the representative of the ruler. Vacated farm land under his control may be let or even sold to natives, subject at all times to the right of the previous owner or his heir to reclaim the holding. Houses, wells, and cultivated trees are owned, but the land on which they are situated is regarded as being under the dominion of the owner of the improvement only so long as the improvement exists.[40]

Such, in brief, are the views of the farming peasantry of Dikwa toward land tenure. The ideas of the Sheikh and his

[37] REPORT FOR 1921, pp. 23-24.
[38] REPORT FOR 1922, p. 22.
[39] REPORT FOR 1921, p. 22.
[40] IBID., pp. 22-23.

councillors, and of the Dikwa chiefs in general, however, are much more in accordance with Nigerian and European laws on the subject.

> No doubt they regard private property in land as an infraction of sovereignty; but they naturally want to encourage immigration, especially Arab immigration, and they object to the "dog in the manger" attitude of the Kanuri, who makes excessive claims to land, refuses to let or sell his rights, and tries to charge rents to Arabs and use the proceeds to pay his taxes. These views have been expressed in so many words by the present Sheikh, including the remark about the tax. He also pointed out that lands left vacant in Rabih's wars or in the famine of 1913 are often claimed by Kanuri with no near title to them. A concrete case will be illuminating. One Husein, a petty Sheikh living in the neighbouring state of Mandara, had been in the habit of coming to Dikwa for three months every year and renting a piece of "firki" land at the rate of a liar (about five shillings at present) per small measure of land. He then decided to migrate with all his community and cattle, but the Kanuri landowners refused to let. Husein appealed to the Sheikh, who, finding on enquiry that there was plenty of land for all and that the old rents were extortionate, decreed a division of the land with the condition that if the harvest were reasonable the Arabs should pay to the Kanuri "Khasham al jurab," Arabic for "mouth of the corn bag," that is, a tenth of the crop. In effect, he created something like a lease in perpetuity . . .[41]

This decision indicates that the trend of action by the chiefs has been and is for the general benefit of the country.

In 1921, the Sheikh proposed the public condemnation at a Mohammedan festival of the right claimed to raise rents and evict tenants at will. Soon realizing, however, that premature action here would be dangerous, he decided to manifest his leadership through his rulings in the individual cases on that subject which came before him, hoping that by such a course a change in policy could be gradually effected. In case of failure, the matter can of course be settled by decree in later years.[42]

Obviously it would have been unwise for the Sheikh peremptorily to have abolished private property in land, in spite of the importance of his retaining the right to divide the lands in proportion to the number of people wishing to cultivate. Instead

[41] IBID., p. 23.
[42] REPORT FOR 1924, pp. 49-50.

of promulgating new regulations, therefore, he will, as has been said, use his influence, as, for example, in his judicial decisions, against the three most undesirable features of the old system of land tenure:

> first, the obstructionist attitude adopted by some of the Beri-Beri headmen towards Arab and other immigrants; second, the exaction by landowners of high rents in cases which enable the lazy owners to live on the proceeds of their rents; third, the transfer, by purchase or otherwise, of large estates between individuals.[43]

Strictly speaking, no lands are anywhere communally owned, nor any lands considered as the absolute property of the state.[44]

### (b) In That Portion Administered With the Northern Provinces of Nigeria

There are no particularly outstanding details in connection with land tenure in that division of the British Cameroons administered with the northern provinces of Nigeria. Interestingly enough, however, although the Pagans are in complete occupation of the major portion of the country, it is claimed by the Fulani chiefs that all rights over land located near their towns, markets, and slave-farm villages are vested in themselves.[45]

The system of native tenure in the northern part of the mandated territory is well summarized in the following extract from a report on the important northern districts of Adamawa, Grumpao, and Yebbi:

> Land is vested in the Chief, who assigns unoccupied portions to those who desire it. The native law and custom, whilst it entitles each individual native to claim sufficient land for the support of himself and his family so long as he fulfills certain obligations demanded by the laws of the tribe, is equally emphatic in denying to him individual proprietary rights in land; whilst his claim to occupy national land was recognized he was invariably liable to forfeit these claims and even to be dispossessed for contravention of local customs. Land has not yet acquired an exchange value. The assignee and his heirs have undisturbed possession of the land assigned, together with the usufruct of the trees growing on it, provided they continue to claim or farm it. No

[43] Report for 1922, p. 22.
[44] Report for 1924, p. 25.
[45] Report for 1921, p. 38.

> cases have come before the administration in which land as property has been sold though instances occur of the pawning or sale of the harvest.[46]

It is the intention of the Mandatory Power to administer the land of this territory in the same manner as it is dealt with in the northern provinces of Nigeria, under the Land and Native Rights Ordinance, which secures to the natives the customary rights to use and enjoy the land of the Protectorate and the natural fruits thereof to an extent sufficient to enable them to provide sustenance for themselves and their families. This Ordinance also preserves for the natives rights of occupation under native custom existing at the time of the enactment of the law. Further, it restates the principle that all lands are native lands, to be controlled by the Governor for the use and common benefit of the indigenous people.[47]

> In other words, the Government has assumed complete control over all land as trustee for the native communities and has the right to occupy all the land it requires without payment or compensation (except for disturbance), and is in a position effectually to prevent the alienation of any land by the native administration to private persons without its consent. The Government would not, however, without sufficient cause occupy any land to the detriment of any native community or individual.[48]

### (c) In the Cameroons Province

In the Cameroons Province, administered with the southern provinces of Nigeria, land tenure is of a communal nature, the ultimate ownership of all land, whether occupied or not, being vested in the chief or the village community.[49] Private ownership is unknown, and land cannot be sold or leased by any private individual in consideration of a rent or other payment. Every member of the community, however, has an indisputable right to the use and enjoyment of adequate land for the needs of himself and his family. Allocation of the land is made by the head of the tribe to various delegates, who are ordinarily the heads of the families. Subject to good behavior and the fulfillment of stated

[46] Report for 1924, p. 25.
[47] Report for 1922, p. 9.
[48] Ibid., pp. 9-10.
[49] Report for 1921, p. 59.

obligations, the occupier and his family gain certain inalienable rights as users of the land.[50]

> The right of property in land is derived either from right of conquest or from first occupation of a hitherto uninhabited country, or through long-continued and uncontested use; and it will be found that the ownership of the land is vested either in the chief as at Bali (Bamenda) or in the community as at Buea, according as the conquest or original occupation was the work of one single chief or of a community acting without any one directing force. In either case it comes to the same thing; it is the native village community or state that is the one and only owner of the whole territory, and this village community or state concedes the enjoyment and use of its lands to families and to individuals. The absolute and irrevocable alienation of land to a stranger is not allowed, and individual ownership can only be acquired over the results of a man's labour or that of his family and dependents, and over an area of land which does not include the soil itself. The ownership of the land remains collective, the representatives of the community, whether a single chief or several heads of families, being the trustees.[51]

### (c) The System in General

In summarizing the native systems of land tenure existent in the British Cameroons, it may be said first that in Dikwa there are prevalent three sets of ideas regarding land tenure. The first and most primitive of these is that in which the land is conceived as being vested in the chief of the clan as trustee; the second regards all land as vested in the Sheikh as paramount lord and landowner, and recognizes only right of occupancy or lease granted at his discretion; the third, applying only to certain types of soil, recognizes the sovereignty of the title of the Sheikh, but insists on the securing for the occupier of the fruits of labor spent in the improvement of the land. These ideas are recognized and protected by the provision of the Land and Native Rights Ordinance to the effect that native laws and custom with regard to land shall be considered in all cases in which natives are involved.[52]

In the south, however, in the non-Moslem parts of the Cameroons, land tenure is communal. The soil is owned by the clan, the chief directing its disposition, and the members of the tribe

[50] Report for 1922, Annexure II, p. 55.
[51] Report for 1921, p 59.
[52] Report for 1924, p. 25.

having usufructuary rights during their life-times. Alienation to non-natives is forbidden, and lease may be granted only through the authorities.[53] Thus the government has shown no desire to interfere with the existing system of land tenure and its natural evolution in these provinces, merely insisting that no person not a native of Nigeria shall acquire any interest in land without the approval of the Governor.[54]

## 4. SYSTEMS OF TENURE IN THE TANGANYIKA TERRITORY

At a conference of the governors of the East African Dependencies in 1926, the following classification was made of the lands of East Africa:

> First, there are those lands which, as jungle or forest or desert or swamp, or because of the inroads of human and animal disease or for other causes, were indubitably unoccupied and unclaimed at the time when our Government was established.
>
> Secondly, there are those lands to which there was only a doubtful claim, the "lands of the spear," where the cattle of hostile tribes grazed under warrior guard whenever grazing was scarce at home.
>
> Thirdly, there are the lands effectively occupied by a large and settled native population.[55]

In commenting on this classification, the conference went on record to the effect that:

> This third category of land should clearly be reserved to its original native owners. In the other two, sufficient land for their own use should be secured to the native tribes originally sprinkled or wandering over it, but the rest is clearly the property of our Government, to develop in the manner which it considers most suitable.[56]

In the Tanganyika Territory, the whole question of land tenure and ownership is somewhat complicated, as there exist

[53] White, Freda, MANDATES, chap. ix., p. 108.

[54] Lugard, Sir Frederick D., MEMORANDUM. Quoted in REPORT FOR 1922, p. 55.

[55] CONFERENCE OF GOVERNORS OF THE EAST AFRICAN DEPENDENCIES, 1926, SUMMARY OF PROCEEDINGS, p. 13. Quoted in REPORT OF THE COMMISSION ON CLOSER UNION, p. 333.

[56] IDEM.

side by side three distinctly antagonistic and mutually exclusive systems.

> These may be described as (1) the ancient tribal system based upon a communal ownership, as established over a wide area of Africa; (2) the purely private and individualistic Arab system, whereby the original alien immigrant possessed himself of a desirable piece of land without consideration for the possible rights of the State or the community; and (3) the European system, under which Government grants of suitable properties were made to certain persons or companies after at any rate nominal consideration of the rights of the native community and the development of the country.[57]

Although the ancient tribal system prevails over the most extensive area, it is confined in general to the less developed and desirable parts of the territory. While this system worked well before the African came into contact with outside influences, it is at present complicated by modern conditions. Caution is ever necessary, therefore, to insure the preservation of native rights, and at the same time, the adequate development of the large and often rich regions involved.[58]

The Arab system of ownership lends itself more readily to incorporation into the European scheme of private property in land. A great complication in its successful operation, however, arises from the fact that these estates were primarily intended to be exploited by slave labor.

> Once slavery ceases, the Arab owner tends to lose his powers of development, and his property falls into a neglected and unproductive state, with the inevitable result of eventual dispossession by the easy road of debt and mortgage. There is thus a constant danger that the former Arab owners (who, after all, were responsible for many useful innovations, and who did much to develop the Coast area in the past) may be expropriated by European or Indian successors who will exploit the properties on modern commercial lines, while the Arab and his ex-slaves sink apathetically into a hand-to-mouth existence under conditions distinctly opposed to social progress. It is no doubt true that these lands were originally seized in utter defiance of the rights of the original African communities; but it is scarcely possi-

[57] REPORT ON THE ADMINISTRATION OF THE TANGANYIKA TERRITORY (hereinafter cited as REPORT) COVERING THE PERIOD FROM THE CONCLUSION OF THE ARMISTICE TO THE END OF 1920, p. 69.

[58] IDEM.

ble to revive such considerations at this stage, while the Arab may be said to have justified his existence to a great extent by the many improvements which he introduced, to the general benefit of the country.[59]

The German administration introduced the European system of land tenure, making large grants to individual persons and companies, often with little or no consideration of native rights and requirements. The resulting native unrest, however, led in later years to a modification of German policy, the methods employed becoming more far-sighted and considerate. Yet it cannot be denied that in many cases land was alienated in absolute disregard of the fundamental principles of a just administration of a backward territory. As a consequence, the present British administration is compelled to make this statement:

> We are left in certain portions of the Territory with an unfortunate legacy in the shape of an over-crowded and discontented native community on the one hand, and with large and valuable properties handicapped for lack of sufficient labour, on the other.[60]

The warlike Masai tribe, whose members are very proud and do not readily engage themselves to work for Europeans, have been assigned an extensive reserve, reaching approximately from Nairobi to Arusha, south of Kilimanjaro. Although they require a great deal of room for the grazing of their cattle, they are able to find pasture in places which would hardly repay cultivation. Some sections of the group have settled down and are devoting themselves to agriculture; it is probable that others will do likewise in the course of time. Those who succeed in inducing the Masai to look after their cattle find them excellent herdsmen.[61]

In general, it may be said that the land problems in the Tanganyika Territory are not so difficult as they are in Uganda, Kenya, and Nyasaland. Arab tenure, governed by Mohammedan law and custom, remains predominant on the coast, while in those districts settled by the Germans there still exist the freehold titles which were granted to non-natives.[62] The only district which might be called a native reserve is that for the

[59] IBID., p. 70.

[60] IDEM.

[61] Lagden, Sir Godfrey, THE NATIVE RACES OF THE EMPIRE, chap. iii., p. 111-112.

[62] REPORT OF THE EAST AFRICA COMMISSION, 1925, p. 129.

Masai tribe, the governor of the territory in 1926 having gone on record as being opposed to the establishment of such areas.[63]

## 5. TENURE IN SOUTH-WEST AFRICA

There is relatively little to be said on the subject of native tenure in South-West Africa. The most interesting feature of its entire tenurial system is the existence of several native reserves, from which many of the men go out to work in the factories or on the farms of others. Some live on the farms on which they labor; by law, however, a farmer is prohibited from having more than ten native families on any one farm.[64]

As far as native tribal life is concerned, European colonization in this region in the past has meant tragedy for the native inhabitants.

> Before the white men came, they were a number of tribes, pastoral and nomadic as was natural in that dry-grass country, owning herds, living on milk and meat, and moving from water-hole to water-hole as the surrounding pasture got trampled out. Some of the tribes such as the Hereros and the Hottentots were rich and proud; none save the Bushmen seem to have been savages.[65]

In these modern native reserves, tribal organization has been reconstructed, and schools are being provided and subsidized. It would seem that the natives are here to be under laws that will give them freedom, justice, and fair opportunities to live and develop in peace.[66] Tenure on these reserves, which are in many cases the ancestral lands of the natives, is generally communal; and the land is inalienable, though there is a steady procession of Europeans into these territories for trading purposes.[67] On the reserves, the natives are given locations for which they pay rent in labor or in cash, this rent going into a trust fund for that reserve, the fund being controlled by a reserve board. This board is made up of the superintendent of the reserve, who acts as chairman, the duly appointed native headmen, and not more than six adult males domiciled or having

[63] Conference of Governors, 1926, *op. cit.*, p. 13. Quoted in Buell, Raymond L., THE NATIVE PROBLEM IN AFRICA, Vol. I, Appendix 13, p. 553.

[64] MINUTES OF THE PERMANENT MANDATES COMMISSION, (hereinafter cited MINUTES), Fourth Session, p. 59.

[65] White, Freda. *op. cit.*, chap. x., p. 128.

[66] Lagden, Sir Godfrey, *op. cit.*, chap. i., p. 67.

[67] Colquhoun, A. R., THE AFRICANDER LAND, Part I, chap. vi. p. 93.

substantial interests in that reserve, these six being elected by the other adult males.[68]

In 1922, with the total area of the country being approximately 83,433,000 hectares,[69] the status of the reserved land was as follows:[70]

| | Hectares |
|---|---|
| Land Occupied by Natives Under German Treaties | 992,931 |
| Reserves Proposed or Granted and Being Occupied | 1,501,480 |
| Land Earmarked for Future Expansion | 406,361 |
| Reserved Native Area | 7,271,250 |
| Government Ground Occupied Pending Closure or Further Action | 315,355 |
| Grand Total | 10,487,377 |

In 1928 it was estimated that there were living on these reserves 4,419 men, 7,350 women, and 8,197 children, making the total native population here at this time 19,966.[71] Off the reserves at this stage of the development of the mandated territory there were to be found 23,939 natives residing in urban areas, and 63,042 in rural regions, including mines and works outside the urban districts.

The following excerpt, which is a splendid explanation of the administration of such a native area, summarizes the relations of the inhabitants to the reserve itself:

> A reserve having been prepared at government cost and set aside by proclamation, the usual procedure is to appoint a resident superintendent except where the reserve is small and within convenient distance of the magistrate, who would then supervise personally.[72]
>
> The selection of a superintendent depends upon his experience of natives, character, and ability. He is also subject to certain rules against trading, farming, possession of cattle, etc., in a reserve. General regulations and adminis-

[68] REPORT FOR 1926, p. 32.

[69] A hectare equals 2.47 acres.

[70] REPORT FOR 1922, p. 14.

[71] REPORT FOR 1928, p. 22.

[72] The Hon. G. R. Hofmeyr, while Administrator of South-West Africa in 1924, stated that where the size and importance of a reserve warranted such a course, a white superintendent was appointed, together with a certain number of paid native Headmen; in the smaller reserves, however, only paid native Headmen were appointed, they being directly responsible to the magistrate. MINUTES, Fourth Session, p. 60.

trative instructions for the superintendent are laid down by the Head Office and communicated by the Secretary for South-West Africa, or Native Commissioner as a matter of routine through the magistrate's office of the district concerned, and to whom the superintendent is responsible for ordinary affairs.

A reserve is usually set aside for one class or tribe, but if it is found necessary to accommodate others, the superintendent, in consultation with the Head Office, must apportion the area accordingly.

As each family or group arrives, the Superintendent, having satisfied himself that there is no legal objection to its admission, such as crime committed elsewhere, want of a pass, etc., registers the family and the stock, together with particulars, unless there is reason to believe the stock has been illegally acquired. He also arranges for the reserve brand to be placed on cattle, and he issues passes and certificates to the newcomers besides indicating, with the assistance of reserve headmen, places of residence, grazing-ground, boreholes to be used or parts where water can be obtained near the surface, and so on.

When natives have begun to assemble in a reserve, the necessary headmen are elected and recognised as spokesmen and assistants to the Administration, unless there is anything against approval of the appointments.

There is no compulsion regarding natives going into reserves from outside nor as to their remaining. The primary object is to give a refuge for natives, especially families, the old and infirm, also for such stock as they wish to bring in or must bring owing to economic pressure elsewhere. The first principle is to get the natives fairly settled, and then to take up the question of their advancement, which time has not yet permitted to go very far.

Those natives already settled have progressed very materially in wealth, comfort, and security. One significant result of the reserve system is an increasing birthrate, which at one time was at a standstill or rapidly declining in town locations. The children are strong and healthy in the reserves and obtain sufficient milk and natural food.

All natives concerned are essentially communal and are not yet ready nor willing to have individual tenure of land.

A Native Reserve Proclamation has been published with the object, *inter alia*, of devoting direct revenue from any reserve to the benefit of the reserve and its inhabitants. This will enable the people gradually to develop, in conjunction with government assistance, civilised methods, education, and mission work, and to improve their stock. In some parts, dams, stock dipping tanks, fencing, a little agricul-

ture, and so forth have been started, besides boring for water, and erection of windmills and reservoirs.

Instructions are frequently issued to magistrates and superintendents for their guidance.

While the laws of South-West Africa generally apply to everyone in a reserve, it is the policy not to break down or interfere with the various native laws and customs which are still preserved and found most satisfactory in regard to peaceful administration and particularly where social and family life are concerned. The natives understand a sort of patriarchal relationship, and minor disturbances can be and generally are settled amongst the natives themselves. Otherwise, they are brought to the superintendent. An appeal also lies to the Magistrate and even to the Head Office if necessary. Serious cases, whether criminal or civil, are dealt with according to the ordinary laws of the territory.

All able-bodied persons are encouraged and urged to seek work outside the reserves at mining centres, on railways, farms, etc., and as the natives' wants in the way of clothing, groceries, and European stuffs have increased a great deal, they realise that in order to satisfy such wants they must work for them, though not fond of labour. At meetings held on reserves, the inhabitants generally agree with the ideas of the Administration that those able to work should do so and not idle in the reserves. The Administration bears in mind that progress is impossible unless the natives also work.[73]

Finally, it is of importance to note that in this primarily pastoral country the natives on some of the reserves do not pay for their grazing privileges. However, the Administration is endeavoring to establish a standard fee for such rights, the plan being to invest the money thus gained in a trust fund which will be used for the development of the reserve.[74]

In general, it may be said that with regard to occupied land in South-West Africa

> the position briefly is that in all the provinces the tribal natives hold, during good behavior, by virtue of inheritance, use or dedication, a large slice . . . , mostly on communal tenure in locations or reserves, their right to it being secured either by title, registration, pledges, or legislative acts.[75]

[73] IBID., Annex 5, p. 178.
[74] MINUTES, Sixth Session, p. 78.
[75] Lagden, Sir Godfrey, *op. cit.*, chap. i., p. 29.

## 6. TENURIAL PROBLEMS AND POLICIES IN GENERAL

It seems preferable that the natural evolution of native land tenure should not be interfered with arbitrarily, either by the introduction of foreign principles and theories which the native could not understand, or by the checking of progress in that evolution through the permanent establishment by legislation of primitive systems, at a time when these systems are still in a transitional state.[76] Native law and custom and the necessities of changing circumstances should be ever fundamental elements in the determination of any tenurial policy.

After this consideration of native conceptions of land ownership and systems of tenure, the oft-quoted statement of Mr. E. D. Morel is again highly pertinent:

> The system of native land tenure is essentially just, thoroughly adapted to the needs of the country and its people, a striking refutation of the "arrested development" theory, as applied to the Negro, and *per se* an eloquent vindication of the Negro's claim to consideration at the hands of the European invaders of, and settlers in, his country. There can be no justification whatever for the break-up of land tenure, or for the alienation of native property under any pretext. It is morally indefensible, and what is morally indefensible is seldom politically wise.[77]

[76] REPORT ON THE BRITISH CAMEROONS FOR 1922, p. 55.
[77] Morel, E. D., AFFAIRS OF WEST AFRICA, chap. xix., p. 173.

CHAPTER FOUR

# THE ALIENATION OF NATIVE LAND

## 1. ALIENATION UNDER GERMAN RULE

It is primarily in the matter of alienation of land that a contrast may be drawn between the attitudes and achievements of former governments and those now administering the territories under the mandates system. A consideration of the German policy toward alienation is therefore of importance.

By the land ordinance of February 2nd, 1911, all lands without an owner in the territory which is now British Togoland were definitely annexed as the property of the state, ownerless land being defined as that to which no person, family, group of families, community or tribal association could show a title.

> Demarcation was at once commenced, a non-native being entrusted by the Governor with the protection of the rights of the natives. A native, to establish his title, was expected to prove continuous possession for ten years. The district commissioners decided on questions of ownership, and were expected to safeguard the interests of third parties. Their decisions were to be confirmed by the Governor. Two years were allowed in which to lodge appeals. The probable increase of population was a factor to be taken into account. Either a sufficient area was to be allotted to the native farmers, or, if the land had already come into the possession of the Government, a portion was to be returned for their use or as their property.[1]

In 1904 the governor issued the following order concerning the acquisition of rights over native lands:

> Lands belonging to natives shall not constitute the subject of any lawful negotiation with, or in the interests of, any foreigners without the approval of the Governor.
>
> Likewise no compulsory execution on the lands described above shall be effected without the approval of the Governor.
>
> The Governor is authorised in the granting of any such permission, in the interests of the public, to attach to the appropriator restrictions and obligations, in especial also as

[1] Peace Handbook No. 110, TOGOLAND, p. 39.

regards to the period in which and the scope within which the land be utilized, as well as to the free release of portions of the land to the government, which may be required for the construction of public works (as amended by Native Land Rights Appropriation Ordinance of 20th May, 1911).

Foreigners in the sense of this Order shall mean all persons not natives of the Division in which the land constituting the legal negotiation is situate.[2]

It may be said, then, that in German Togoland the alienation of land was subject to the approval of the government, whose stated aim was to guarantee to the inhabitants the uninterrupted possession of their lands, and fair terms in those cases in which contracts had to be made. Theoretically, at least, native customs and rights were fully respected; and no contracts were recognized which did not meet the requirements of all such local precedents.[3]

The earliest document of any importance with regard to the alienation of land in the territory now the British Cameroons was the All-Highest Decree of June 15th, 1896.

Save and except in the case of claims to property or other realty which private or legal persons, chiefs, or native communities can substantiate, save and except also the rights of occupation of third parties established by agreements with the Imperial Government, all lands within the Protectorate being ownerless shall be Crown land. . . .

When Crown land is occupied in the vicinity of existing settlements of natives, areas shall be reserved, the cultivation and usage whereof shall ensure the subsistence of the natives, having regard also to future increase of the population.

Ownerless land (Crown land) shall be sought out and determined by Land Commissions which shall be appointed by the Governor who shall allot to them the requisite staff of surveyors. These Commissions shall also decide any claims made by private persons. An appeal to the law shall lie against such decision . . .

Crown land shall be disposed of by the Governor, to wit, either by transfer of the title to ownership or by lease. Regulations made under the mining laws, whether already in force or yet to be promulgated concerning the disposal of subterranean treasures of the soil, are not affected by the disposal of Crown land.

[2] REPORT ON BRITISH TOGOLAND FOR 1922, pp. 40-41.
[3] IBID., p. 12.

The conditions governing the disposal of Crown land shall be determined by the Governor on the detailed instructions of the Imperial Chancellor.

When Crown land is disposed of, sufficient areas shall be reserved for public purposes; in particular, forests the preservation whereof is to the public interest shall not be disposed of. There shall also be the right to recover any land required for roads, railways, canals, telegraph lines, and other public works in consideration of a refund of any actual immediate losses to those entitled thereto . . .

The sanction of the government shall not be necessary to the acquisition of ownership or to leases of property which is owned or leased by a non-native. The Governor, however, is empowered to make notification of such juristic transactions obligatory universally or for certain districts.

Without the sanction of the Governor it shall not be permissible for natives to make over the title of ownership to urban properties of more than one hectare (2.4 acres) or to any rural properties, or to lease them for a period exceeding fifteen years, to a non-native.

Agreements which require sanction accordingly and sanction of which is refused shall be null and void.

With the specific approval of the Imperial Chancellor the Governor may be empowered to authorize individuals and companies to prospect for land in territories where Land Commissions have not yet been engaged to make agreements with the owners, if any, or other interested parties for the cession of the land, and to occupy such land provisionally as ownerless land.[4]

At the time when the German government in Kamerun fell, however, the demarcation of Crown land in accordance with this Ordinance was far from complete, very few such areas having been marked out.[5]

There seems to have been no definite land policy of general application in this territory before the passage of the decree of 1896. During this early period, ownership was established in various ways, in some cases by simple occupation, in others by purchase from the native chiefs, and in still others by purchase from the government. After the enaction of this measure, however, occupiers of land were given freehold titles.[6]

[4] REPORT ON THE BRITISH SPHERE OF THE CAMEROONS, Cmd. 1647, pp. 65-66.

[5] REPORT ON THE BRITISH CAMEROONS FOR 1927, p. 78.

[6] REPORT ON THE BRITISH SPHERE OF THE CAMEROONS, Cmd. 1647, pp. 60-61.

The Land Commissioners then proceeded to carve out native reserves on the basis of six hectares (about fifteen acres) for each adult male; and all the remainder of the land not covered by a title or forming part of a reserve, was declared Crown land. In some instances a friendly settlement by way of exchange was come to with the government; in other cases resort was had to the law. The legal position on this point of expropriating plantation lands for native reserves is obscure, largely due to the extremely vague wording of the clauses intended to safeguard the rights of natives in the agreements dating prior to 1896, and also to conflicting decisions of various land commissioners at different times.

The natives generally complain that the reserves are not large enough, and that the worst land was allotted to them. In the northern districts no native reserves were created, nor does there appear to have been any definition of what was or was not Crown land, presumably because the condition of these regions was not such as to tempt concessionaires. The governments took what land they needed; and a few odd traders and the missionary societies had no difficulty in getting the comparatively small areas they required.[7]

Only two other important acts were passed with regard to the alienation of land in Kamerun. In 1903 it was provided that property might be expropriated for public purposes if compensation were made to the owner, while in 1910 certain regulations dealing with the sale and leasing of Crown lands were established.[8]

The general effect of the German land policy may be briefly summarised as follows. In the northern part of the British sphere there has been practically no interference with the rights of native communities over their lands. In the southern portion, round the base of Cameroon Mountain, the rights of the natives have been alienated, except in so far as certain areas have been reserved for their use.[9]

Very soon after their occupation of the Tanganyika Territory, the Germans introduced there a system of land laws to be applied to non-natives, this system being based on the general Prussian statutes regarding the subject. With certain modifications, this code was in force at the outbreak of the World War.

Subject to the rights of private persons or of chiefs or native communities, all unowned land was declared to be

[7] IBID., p. 61.
[8] IDEM.
[9] IDEM.

Crown land, and the ownership of it was declared to be vested in the Empire. Such Crown land could be granted by the Governor either by way of transfer of ownership or by lease, but before any such grant could be made it was necessary to ascertain that the land was in fact free from claims of third parties and unoccupied; and for this purpose a system of Land Commissions was established, whose duty it was to enquire on the spot as to whether any particular piece of land which had been applied for was in fact free to be disposed of by the government.

The Governor had wide powers as to imposing conditions on making any grant of land, and it was particularly provided that in the neighborhood of native settlements areas, sufficient to ensure the subsistence and other needs of the native population, were to be reserved. In addition there might be a reservation of all minerals, of adequate areas for public purposes, particularly forest land, and a right to resume land required for roads, railways, canals, etc., upon payment of compensation.

Originally all agreements for the transfer of the ownership of land or of leasehold interests where the lease exceeded fifteen years were subject to the sanction of the Governor. Such an interference with the rights of private property did not, however, long survive; and an Imperial Ordinance of November 26th, 1895, laid down that this sanction was not required in the case of land owned by a non-native. Transfer of lands by natives to non-natives still remained subject to such sanction.[10]

Originally at least, the German government encouraged white settlement, alienating more than half a million hectares of land, most of it being located in the northeastern highlands. About one-fifth of it was placed under rubber, sisal, coffee, and cotton cultivation.[11]

These alienations were controlled by an Imperial Decree of 1895, which, as has been seen, declared all land in German East Africa to be Crown land, subject to the rights of private and juristic persons or of chiefs and native communities. Land Commissions were appointed by the Governor for the native reserves; they were obliged to set aside for the natives four times the amount of suitable land under cultivation, although they were authorized to offer the natives a definite sum for withdrawing from their land. These commissions accordingly marked out reserves totaling 756 square miles in the highlands of

[10] REPORT ON TANGANYIKA TO THE END OF 1920, pp. 70-71.

[11] Buell, Raymond L., THE NATIVE PROBLEM IN AFRICA, Vol. I, chap. xxix., p. 486.

the northeast. The remainder of the land in this vicinity was alienated by the government to German settlers, either under freehold or lease.[12]

The effect of the entire system in old German East Africa is well summarized in the following extract:

> By law, ownerless lands throughout the territory were domain or Crown land, a government enquiry determining their extent. Natives were to continue to enjoy the land they occupied, and were to be allowed at least four times as much as they cultivated. This, however, was a mere official declaration, and is no guide to the actual German treatment of the natives.
>
> Seyyid Bargash, Sultan of Zanzibar, who claimed sovereign rights over the adjoining African coast, renounced these by treaty with the Deutsch-Ostrafrikanische Gesellschaft. Under his rule, the actual soil of a property and the buildings or plantations upon it had often been in the hands of different tenants; and this dual ownership, inconsistent with European ideas, survived round Tanga and elsewhere even after the German Civil Code had been introduced. The anomaly became the more noticeable as land rose in value, and as conditions of ownership of the ordinary kind were applied to an increasing extent of territory. Some attempts were made to develop a land reform policy, but these led to many conflicts between the administration and the landholders.
>
> Natives were evicted wholesale from their homes on all kinds of pretexts, while their huts were burnt and their effects destroyed. In Tanga, the government took possession of the land in the town, having first removed the native population, then planted palms on it, and as copra oil realized high profits, let out small holdings at high rents. At Dar-es-Salaam two-thirds of the natives (16,000) occupied the Sultan's land (the Schollershamba) covering 24.2 hectares, which included a great part of their reserve and had been acquired by a European association which granted them the right of settlement. In 1915 the municipality received from the Treasury a grant of 500,000 rupees to buy the Schollershamba, and the sale contract was signed or about to be signed at the time of the outbreak of war. There can be little doubt that the natives would have experienced the same treatment as those at Tanga.
>
> Outside the municipal areas, Crown land was not sold outright until at least half was cultivated, but was leased at five per cent of the sale price of from ten to one hundred heller per hectare per annum. The leasehold conditions

[12] IBID., p. 487.

were that cultivation must begin at once, and must be extended at the rate of one-tenth of the land each year. Pasture land was obtainable on the sole condition of its being fenced with wire or quickset hedge. Native rights on land taken up by Europeans were to be recognized to the extent of four hectares per hut.[13]

A policy of ruthless alienation was also followed in German South-West Africa, land there being both sold and leased. Sir Godfrey Lagden says of this:

> Under the German military system of rule, those who would not submit to being practically enslaved were exterminated or driven to seek refuge under the British flag. Their condition was made insufferable under regulations, which could be enforced by any European, without the right of appeal to authority.
>
> Those regulations provided amongst other things that the natives:
>
> should abandon tribal life and be dependent for their living upon employment by Europeans, and be regarded as vagabonds if found doing otherwise;
>
> should have no right or title to land;
>
> should all, including unemployed young women and second wives, be distributed for labour at farms or industries;
>
> should not be allowed to keep horses;
>
> should not be allowed to remove of their own free will from one part to another.
>
> These conditions, which demoralised and were fast leading to extinction of the races, have now disappeared or have been modified in conformity with the policy followed in the Union of South Africa.[14]

An adequate picture of the effect of this German system is found in the following table with regard to land ownership in South-West Africa, during the years 1912 to 1914:[15]

[13] Peace Handbook No. 113, TANGANYIKA, pp. 78-79.
[14] Lagden, Sir Godfrey, THE NATIVE RACES OF THE EMPIRE, chap. i., p. 67.
[15] OFFICIAL YEAR BOOK OF THE UNION OF SOUTH AFRICA, No. 6, p. 96.

| Description | Area in Acres 1912-1913 | 1913-1914 |
|---|---|---|
| Total Area | 206,245,000 | |
| Government Land | 150,888,491 | 150,931,946 |
| Government Land Fit for Farms | 121,272,727 | 121,365,806 |
| Native Land | 7,190,170 | 7,146,715 |
| Company Land | 29,609,970 | 30,021,126 |
| Company Land Fit for Farms | 21,932,172 | 21,932,222 |
| Land Sold: | | |
| Government Land, 1120 Farms | 28,377,830 | 29,369,743 |
| Native Land, 56 Farms | 1,490,561 | 1,635,953 |
| Company Land, 71 Farms | 1,144,571 | 1,345,515 |
| Land Leased: | | |
| Government Land, 82 Farms | 1,371,265 | 1,697,809 |
| Native Land, 7 Farms | 167,219 | 68,419 |
| Company Land, 49 Farms | 1,635,140 | 1,101,919 |
| Land Available for Sale or Lease: | | |
| Government Land | 83,066,078 | 81,901,562 |
| Native Land | 5,557,090 | 5,442,344 |
| Company Land | 19,152,010 | 19,484,788 |
| Surveyed Government Land Available for Lease: | | |
| Plots of Unknown Area | 614 Farms | 709 Farms |
| Government Land Reserved, 297 Farms | 8,458,552 | 8,396,693 |
| Native Reserves: | | |
| Bondelswartz and Hottentots | 432,250 | 432,250 |
| Berg-Damaras | 424,840 | 425,581 |
| Game Reserves | 21,693,763 | 21,693,763 |

The essence of the German land policy was very candidly stated by Dr. Paul Rohrback, who in 1890 had occupied a high position in the Colonial Office of the Imperial Government:

> The decision to colonize in South-West Africa could, after all, mean nothing else but that the native tribes would have to give up their lands on which they had previously grazed their stock in order that the white man might have the land for the grazing of his stock.[16]

Particularly shocking is the fate which befell the Hottentots and the Hereros, who alike regarded their land as the communal property of the tribe and therefore inalienable. But acquisitions were made in these tribal regions first by German missionaries, then by traders, and then by concession-hunting companies, with the result that the major portion of the land of the Hereros and

[16] Peace Handbook No. 112, SOUTH-WEST AFRICA, pp. 59-60.

the Hottentots was finally confiscated, these two groups being almost exterminated.[17]

Such, then, were the general land policies of the former administrations of these old German colonies. Although on paper there seem to have been many advantageous features, nevertheless the system and the activities which occurred under it must be condemned, not primarily because of any inherent defect in the scheme itself, but because of the regrettable inefficiency of the administrative officials appointed by the Imperial Government. Moreover, quite often these officials were unscrupulous and corrupt; more than once this lack of moral strength was extremely costly to native welfare.

In this discussion of the alienation of land, the most important of all land problems, the opportunity again arises to emphasize particularly the failure of the system of imperial ownership, typified by the old German administrations, to protect the welfare of the indigenous peoples, and to indicate once more the possibilities for such protection under the modern enlightened administration of the Mandatory Powers.

## 2. ALIENATION UNDER THE MANDATES SYSTEM

### (a) In General

The problem of the alienation of land in backward territories received very full consideration at the Paris Peace Conference in 1919. The Italian Delegation at a session of the Commission for the Revision of the Berlin and Brussels Acts presented the following draft clause, the influence of which is evident in the provisions of the 'B" mandates to the effect that the Mandatory Power shall consider native law and custom in its dealings with native land:

> Legislation regarding landed property shall respect as far as possible customs in force in the territory, and the interests of the native populations.
>
> Land and real rights belonging to natives cannot be transferred to non-natives without the consent of the local government; and no claim to the said lands can be created for the benefit of non-natives without like consent.[18]

[17] Ibid., p. 60-65.

[18] Beer, George L., African Questions at the Paris Peace Conference, Part III, chap. vii., p. 257.

That the Mandatory Powers have obeyed the spirit of these injunctions in the passage, and, to some extent, in the execution of their laws is indicated in the following excerpt from the *Report on Tanganyika for 1926*:

> Administrative officers, in dealing with the disposition of land, have been instructed to bear constantly in mind the first part of the preamble of the Land Ordinance, 1923, as follows:
>
> "Whereas it is expedient that the existing customary rights of the natives of the Tanganyika Territory to use and enjoy the land of the Territory and the natural fruits thereof in sufficient quantity to enable them to provide for the sustenance of themselves, their families, and their posterity should be assured, protected, and preserved . . . "
>
> Also the injunction in Section 3 of the Ordinance that the land vested in the Governor "shall be held and administered for the use and the common benefit, direct or indirect, of the natives of the Territory."
>
> Also the further injunction, in Section 4, that the Governor in the exercise of the powers conferred upon him by the Ordinance in respect to any land "shall have regard to the native laws and customs existing in the district in which such land is situated.[19]

### (b) In British Togoland

Under the German government, European firms were permitted to purchase land in British Togoland for trading purposes only, even that purchase being allowed solely on the following conditions:

> (a) The land had to be situated at one of the acknowledged trading centres;
>
> (b) It was compulsory within twelve months to erect a building for trading purposes;
>
> (c) Transfer by Europeans to natives and Syrians was forbidden, but Europeans could transfer between themselves;
>
> (d) On a European firm becoming bankrupt the land reverted automatically to the original owner.[20]

These regulations of the former government are almost more detailed and complicated than are those of the present administration on the same subject. Now the simple statement is made that land in the British Sphere cannot be alienated from a

[19] P. 84.

[20] Report on British Togoland for 1925, p. 84.

native to a non-native. Although lease is permissible, such transactions must be conducted before the District Commissioners, who express the approval or disapproval which the Administration has for that particular grant. Approval is given only when the Administration is satisfied that the rights and interests of natives and native communities are not infringed.[21] All contracts are signed in the presence of the political officers, on whom is imposed the duty of seeing that they are fair.[22]

The Land Ordinance of 1927, which was enacted for the Northern Section of the British Sphere of Togoland, provides that the political officers are to have power to inquire into and settle, in an executive capacity, any disputes which may arise between natives with respect to land. Provision is made for the review of the decisions of the District Commissioners by a Provincial Commissioner and by the Chief Commissioner of the Northern Territories. The disregard or defiance of any such decisions or settlements by any person is to constitute an offense punishable by a fine not exceeding fifty pounds or by imprisonment with or without hard labor for any term not in excess of three months.[23] This Ordinance has absolutely no effect on the native systems of land tenure, these being made the basis of every decision.[24]

In the Southern Section of British Togoland, there is applied that legislation which came into force in the Gold Coast Colony in 1927, all of this being in line with the ideal of the preservation of native welfare.[25] In case of conflict, however, these provisions must yield to the British Sphere of Togoland Administration Ordinance of 1924.[26]

> From the Southern Section it is reported that there is an increasing demand for land for cocoa, particularly in the northern part of the Section, and many people are obtaining land for this purpose. This is leading to an influx of people from the Colony. The local people only sell where, owing to lack of numbers, they cannot cultivate themselves; and they have a pretty good idea of the value of their land. Under the Ordinance all purchases of land by non-natives of the

[21] REPORT FOR 1923, p. 33.
[22] REPORT FOR 1925, p. 83.
[23] REPORT FOR 1927, p. 4.
[24] IBID., p. 47.
[25] IBID., p. 7.
[26] IDEM.

Southern Sphere must be approved by the authorities. There have been no applications from non-Africans.[27]

In this connection, it will be remembered that the typical "B" mandate provides that:

> No native land may be transferred, except between natives, without the previous consent of the public authorities, and no real rights over native land in favour of non-natives may be created except with the same consent.[28]

It is to be regretted that there are available no figures as to the amount of land alienated or leased in British Togoland; but a comprehensive search has revealed nothing. This may be due in part, if not altogether, to the fact that:

> Of all the mandated areas, Togoland may be said to come the nearest to being a completely native territory, perhaps because of all the areas it is that least suited to white settlement.[29]

### (c) In the British Cameroons

Before 1927 the alienation of land in the British Cameroons was regulated by the Crown Lands Ordinance, the Public Lands Acquisition Ordinance, and the Native Lands Acquisition Ordinance.[30]

Titles to Crown lands, which are limited in extent, are issued in the form of leases, the conditions and terms of such leases being governed by the purposes for which the land is to be used. The regulations of the Crown Lands Ordinance of 1918 provide for four types of leases, agricultural, building, railway site, and native occupation, the rents for all types being revisable. The maximum terms are, as a rule, 45 years for agricultural leases, 60 years for building leases, and 21 years for those for railway sites. Leases to natives of Nigeria, however, may be granted for any term or for an indefinite period.[31]

Accepting the principle established by the former German government that all ownerless lands constitute Crown lands,[32]

[27] Ibid., pp. 47-48.

[28] C. 449 (1) b. M. 345 (b). 1922. VI. British Mandate for Togoland, Article V, p. 4.

[29] Van Maanen-Helmer, Elizabeth, The Mandates System in Relation to Africa and the Pacific Islands, chap. iv., p. 65.

[30] Report on the British Cameroons for 1927, p. 78.

[31] Report for 1922, p. 56.

[32] See page 62.

the Mandatory Power was therefore faced with the undertaking of seeking out ownerless lands, of demarcating them and of administering them as Crown lands as, until that was completed, there could be no security of tenure beyond those areas which had actually been demarcated as Crown lands by the German government. For instance, until all ownerless lands had been demarcated as Crown lands a lease under the Native Lands Acquisition Ordinance could not be issued until a title to the land required by the lease had been established.

The work of seeking out ownerless lands and causing them to be demarcated as Crown lands would have been one of great magnitude and would have entailed following a policy which was considered contrary to Article V of the Mandate, by which "in the framing of laws relating to the holding or transfer of land the Mandatory shall take into consideration native laws and customs and shall respect the rights and safeguard the interests of the native population," and also contrary to the generally accepted land policy of British administration in West Africa. Even had it been considered advisable to pursue the policy of demarcating ownerless land, the period of uncertainty would perforce have been so long as, possibly, to retard the progress of the mandated territory.[33]

By the Native Lands Acquisition Ordinance of 1917, provision was made for the leasing of land for a term of years in return for the payment of a sum of money, in consideration of a rent, or by weekly, monthly, or quarterly tenancy. Under this Ordinance, the Governor was given power to refuse to approve any lease which he did not think desirable.[34]

The following extract from the Native Lands Acquisition Ordinance shows its control over the creation of rights in land by aliens:

> No alien shall acquire any interest or right in or over any lands within the Protectorate from a native except under an instrument which has received the approval in writing of the Governor.
>
> Any instrument which has not received the approval of the Governor as required by this section shall be null and void.
>
> It shall be unlawful for any alien or for any person claiming under an alien to occupy any land belonging to a native, unless the right of the alien to occupy or authorise the occupation of the land:

[33] REPORT ON THE BRITISH CAMEROONS FOR 1927, pp. 79-80.
[34] REPORT FOR 1922, p. 56.

is evidenced by an instrument which has received the approval of the Governor in writing; or

was acquired, if the land is situated in that part of the Southern Provinces which in the year 1900 was included in the Protectorate of Southern Nigeria before the first day of January, 1900, and in the case of lands situated elsewhere in the Southern Provinces, before the 30th day of March, 1908; or

is authorised by or under any Ordinance.

An alien is defined as any person who is not a native of Nigeria.

An instrument means any document in writing affecting land, and includes a will.[35]

It is the intention of the government that land disputes between natives of Nigeria shall be decided by native law and custom. Disputes regarding titles granted under the Crown Lands Ordinance of 1918, or the Native Lands Acquisition Ordinance of 1917 are, therefore, heard by the Supreme Court. All questions with reference to tribal or communal boundaries are settled by the Resident of the province. If the communities involved belong to different provinces, the dispute is settled by joint inquiry by the two Residents, subject to the decision of the Lieutenant-Governor and final appeal to the Governor.[36]

Even in the early days of British administration, in those sections of the Cameroons administered from the northern provinces of Nigeria, the alienation of land was controlled by the provisions of the Land and Native Rights Ordinance. This was enacted to secure to the natives the customary rights to use and enjoy the land and the fruits thereof in sufficient quantity for their sustenance. It was soon realized that there were disadvantages in the dual system of land tenure. Further, the Native Lands Acquisition Ordinance was not working as it should in the Cameroons. Therefore, by the British Cameroons Administration (Amendment) Ordinance of 1927 the provisions of the Land and Native Rights Ordinance were extended to all the territory under British authority, the Native Lands Acquisition Ordinance and all regulations bound up with it being declared no longer applicable to the mandated region.[37]

It should be observed that by this Ordinance

[35] IBID., p. 55.
[36] IBID., p. 57.
[37] REPORT FOR 1927, p. 78.

> provision is made for two classes of occupiers: (a) natives or non-natives who have been granted a right of occupancy by the Governor, and (b) natives who occupy land under and in accordance with Native laws and customs. The rights of class (a) are defined by the Ordinance and by any special contract between the Governor and the occupier. The rights of class (b) are governed by the Native laws and customs of the district in which the land is situated modified by the provisions of the Ordinance and Regulations thereon. Class (a) must, except in a few excepted cases provided for by the Ordinance, pay rent which is to be credited to local Native Administration funds. Class (b) are not required to pay rent. The rights of class (a) to continue to occupy land during the term of the rights of occupancy can be determined for "good cause," under the provisions of the Ordinance. The right of class (b) to continue to occupy any particular land is subject to the right of the Governor to regulate the use and occupation of all land to the general benefit of the community.[38]

This Ordinance emphasizes as fundamental principles the facts that the whole of the lands whether occupied or unoccupied are native lands, subject to the control and disposition of the Governor to be administered for the use and common benefit of the indigenes, and that such control is to be exercised as far as possible in accordance with the laws and customs of the natives themselves.[39]

A very important provision is found in Section Twenty-Two, reading as follows:

> Nothing in this Ordinance shall be deemed to affect the validity of any title to land granted to a non-native or any interest therein acquired by such non-native before the 4th February, 1927, but all such titles shall have the same effect and validity in all respects as though this Ordinance had not been enacted. Provided always that such titles shall be proved to the satisfaction of the Governor before 1st January, 1928.[40]

All land to which a title is established under this section, and all land in the Cameroons which has at any time been vested in the Public Custodian appointed under the first Public Custodian Ordinance, is exempted from the provisions of this Ordinance.[41]

[38] IBID., p. 80.
[39] IBID., p. 79.
[40] IBID., pp. 79-80.
[41] IBID., p. 79.

It is further provided that no title to the occupation and use of any native lands shall be valid without the consent of the Governor, who shall have regard for the native laws and customs existing in the district where the lands are situated. The Governor may grant "Rights of Occupancy," demanding rental for such rights, with the privilege of making periodical revisions of this rental. All such rents collected are to be paid into local Native Administration funds.[42]

Finally, it is provided by Section Fifteen that

> the devolution of the rights of an occupier upon death shall be, in the case of a native, by the native custom existing in the locality in which the land is situated.[43]

Such, then, are the principal features of the Land and Native Rights Ordinance, which has so far constituted a satisfactory solution to the various land problems existing in the British Cameroons.

Unfortunately, as in British Togoland, no statistics are available as to the amount of land which has been alienated. One should remember, however, that the land of the Cameroons is desired principally for cocoa and palm plantations; such areas already in existence will be discussed in a later chapter.[44]

### (d) In the Tanganyika Territory

According to their tenure, the lands of the Tanganyika Territory may be classified in the following manner:

> (a) Lands which have been appropriated by written legal process or title to the use of individuals.
>
> (b) Lands which by virtue of custom or long prescriptive possession have been constituted into collective or individual estates, the ownership of which is not supported by title and can only be established by repute, custom, or prescription.[45]

The first important measure issued by the new government with reference to land in the Territory was the Order in Council of 1920, the salient features of which are here given:

> All rights in or in relation to any public lands shall vest in and may be exercised by the Governor for the time being in that for His Majesty, or if the Secretary of State at any

[42] Ibid., p. 80.
[43] Idem.
[44] See Chapter Six.
[45] Report on Tanganyika for 1924, Appendix I, p. 47.

time with respect to all or any such lands by Order under his hand so directs, in such other trustee or trustees for His Majesty as the Secretary of State may appoint.

The Secretary of State may, when he thinks fit, by a like order remove any trustees so appointed, and may appoint any new or additional trustee or trustees . . .

The Governor, or such other trustee or trustees, may make grants or leases of any such public lands . . . as aforesaid, or may permit such lands to be temporarily occupied, on such terms and conditions as he or they may think fit, subject to the provisions of any ordinance.

Subject as aforesaid, the Governor, in His Majesty's name and on His Majesty's behalf, may make and execute, under the Public Seal, grants and dispositions of any lands within the Territory which may be lawfully granted or disposed of by His Majesty: Provided that every such grant or disposition be made in conformity either with some Order in Council or law now or hereafter in force in the Territory, or with some Instructions which may be addressed to the Governor . . .

"Public Lands" means all lands in the Territory which are subject to the control of His Majesty by virtue of any treaty, convention, or agreement, or of His Majesty's Protectorate, and all lands which shall have been acquired for the public service or otherwise however.[46]

The Land Ordinance of 1923 declared the whole of the land of the Territory to be public land, under the control of the Governor, and subject to his disposition, to be held and administered by him for the use and common benefit, direct or indirect, of the natives of Tanganyika. The validity of any title to land or interest therein lawfully acquired before the date of the Ordinance, however, was not affected thereby. Rights of occupancy may be granted for any definite term not in excess of 99 years; but, except with the approval of the Secretary of State, no single right of occupancy may be issued to a non-native in respect of any area exceeding in size 5,000 acres.[47] Further, no grant of freehold may be made except where it is necessary to give effect to any contract or undertaking by the former German government, land granted by that government being held either under freehold or lease, with the option of purchase.[48]

[46] REPORT ON TANGANYIKA FOR 1923, pp. 59-60.
[47] REPORT FOR 1927, p. 69.
[48] REPORT FOR 1924, Appendix I, p. 47.

The first rent to be charged for a right of occupancy to a non-native is determined by the offer of the highest bidder at a public auction. The rent is then subject to a reserve or upset rent, which is fixed by the Governor. It varies for different localities, the minimum being considerably less than a shilling per acre per annum for agricultural land and even less for pastoral lands.[49] The initial rent is revisable at the end of 33 years and again at the end of 66 years.[50] The grantee of the right of occupancy has to agree to certain obligations as to cultivation, fencing, and development, these requirements varying, of course, with the use which is to be made of the land.[51]

With regard to the actual process of the alienation of land, when any particular area is applied for, the usual procedure is to refer the application to the administrative officer in charge of the district in which the land applied for is situated.

> The land is then visited by an administrative officer and an enquiry is instituted on the ground as to whether the land is effected by any native rights of ownership or occupation, either permanent or intermittent, or whether it is really vacant land. If any native rights are likely to be infringed, they are specifically safeguarded in the grant, or if this is not feasible, the application is not proceeded with.
>
> Transfers of land from natives to non-natives are not permitted except with the sanction of the Governor, and such transactions as have been allowed related only to small holdings on the coast belonging to Arabs or Swahilis.
>
> In many cases in the past Indians obtained mortgages on coconut and other plantations belonging to the natives on the coast as security for money lent or for credit given.
>
> The Credit to Natives (Restriction) Ordinance, 1923, will prevent this in future as it debars suits for the recovery of money advanced to natives unless the debt was approved by an administrative officer in the first place.[52]

In 1926 there was passed the Land (Amendment) Ordinance. Before its enactment, only the Attorney-General or some other officer specially appointed could institute legal proceedings in respect of the unlawful occupation of public land. The amending Ordinance provides a simpler procedure.[53]

[49] REPORT FOR 1927, p. 69.
[50] REPORT FOR 1924, p. 33.
[51] REPORT FOR 1923, p. 42.
[52] REPORT FOR 1924, Appendix I, pp. 47-48.
[53] REPORT FOR 1926, p. 56.

The Ordinance of 1923 further provided that if the occupier of the land granted under a right of occupancy desired to renew that right or have the term extended, his application for such renewal or extension had to be treated as one for a new grant, the land being again offered to the public at auction. It will easily be seen that under this provision great hardship might have been involved in those cases in which an occupier had expended considerable sums in the development of the land and in the erection of permanent buildings. Consequently, to eliminate this dangerous possibility, there was enacted the Land (Further Amendment) Ordinance of 1926, which enabled a right of occupancy to be renewed, or its term extended, without auction when the circumstances seem to the Governor to make such a concession desirable.[54]

Another very interesting point was involved in this same Ordinance:

> Under a system established by a German Decree of the 22nd March, 1905, a large number of plots came into the occupation of tenants who paid to the government either yearly or half-yearly a sum, of the nature of rent, fixed by the Decree at 50% of the Hut and Poll Tax. This system was continued after the British occupation, and is now commonly known as Kiwanja Tenure.
>
> These tenancies are regarded as tenancies from year to year, terminable upon six months' notice by either party. The form of tenure is not in accordance with the provisions of the Land Ordinance, 1923, relating to the occupation of what is now public land. Moreover, it is disadvantageous to the tenant, who lacks the security which a right of occupancy under the Land Ordinance for a definite term would give, and it is disadvantageous also to the public revenue, which receives in many instances much less than the true economic rent of land occupied under this system.
>
> The amending Ordinance accordingly enables the Governor to dispense with the necessity for an auction when a person in lawful occupation of public land applies for a right of occupancy under the Land Ordinance and where the holding of an auction would cause hardship to the applicant by reason of the duration of his previous lawful occupation, of the use of the land made by him, or of his expenditure of capital or labour on the land.
>
> The Ordinance further provides for the conversion and enlargement into rights of occupancy of the lesser rights of other lawful occupiers as, for example, rights acquired

[54] IBID., p. 57.

under Temporary Occupation Licenses granted by the British government before the commencement of the Land Ordinance, 1923.

To obtain the benefit of the Ordinance application for conversion into a right of occupancy has to be made before 31st December, 1927.[55]

As a result, at the present time Kiwanja tenure has practically ceased to exist.

The Land (Perpetual Succession) Ordinance was enacted during the year 1927, its object being to facilitate the acquiring, holding, and transmission of land by religious, educational, and charitable societies and associations, and others of similar type. It enables any such society or association to become a corporate body, by which land can be held in perpetual succession.[56]

In 1927, also, another amendment was added to the Ordinance of 1923. Its main object

> is to give expression in the land law of the Territory, and consequent protection, to the fundamental principle which underlies it, to wit, the preservation of the existing customary rights of the natives of the Territory to use and enjoy the land and its natural fruits in sufficient quantity to enable them to provide for the sustenance of themselves, their families, and posterity. As a doubt had arisen whether native occupiers of communal land to whom no certificate of occupancy had been issued would be recognized as occupiers under the principal Ordinance and be entitled to the protection against arbitrary disturbances which that Ordinance gives, the law has been so amended as expressly to recognize a native's right to the use of such land as a right of occupancy under the Ordinance.[57]

By the Land Ordinance of 1923, all water rights are reserved to the government. The large amount of irrigation from public rivers, both by natives and by Europeans, particularly in the Moshi and Arusha districts, with the attendant disputes, made necessary the passage of an Ordinance to regulate the use of natural sources of water supply.[58] This provided for the formation of District Water Boards, with a Central Advisory Board for the Territory. Such District Boards have been created for the districts of Arusha, Moshi, Usambara, and Tanga.[59]

[55] IBID., p. 58.
[56] REPORT FOR 1927, p. 69.
[57] IDEM.
[58] REPORT FOR 1923, p. 42.
[59] IBID., p. 43.

As to actual alienation, the Commission on the Closer Union of the Dependencies in Eastern and Central Africa says in its *Report*:

> In Tanganyika the principal area of non-native settlement is in the Moshi and Arusha districts, but the limits of alienation in this neighbourhood have been approached. The pressure of the growing native population in these districts is already making itself felt. The chief other area in Tanganyika suitable from the point of view of climate for white settlement is the southwestern highlands. In the Iringa Province there are about 25,000 square miles of high country, but the general suitability of this tract as we have already stated remains to be proved. Moreover, the extent of effective native occupation is not exactly known and the prospects of white settlement must remain uncertain until detailed surveys have been completed. As regards the remainder of Tanganyika the choice of areas available for white settlement is limited, either for climatic reasons or on account of the density of the native population.[60]

At the close of the year 1928, of the total area of 373,494 square miles or 239,036,160 acres, there had been alienated approximately 3,430 square miles or 2,195,000 acres. In other words, only about nine-tenths of one per cent of the land of the territory has been subject to such transactions.[61]

The following excerpt from a Tanganyika *Report* is indicative of the activities taking place each year under the various land ordinances:

> There has been a steady demand for land for agricultural purposes from bona-fide settlers throughout the year. In the vicinity of Kimamba, in the Morogoro district, the area having been proved to possess excellent cotton soil, a large block was demarcated and the lease sold by public auction to planters at the beginning of the year at an upset rental of two shillings per acre per annum, and additional plots have been auctioned during the year. There is an area of approximately 7,500 acres cleared for cotton cultivation during the coming year, and from the further applications received for land in the Mkata plains for cotton cultivation there is every proper reason to believe that this huge area will be opened up in the near future. In the Arusha-Chini area of the Moshi district a block comprising 2,000 acres in 100-acre plots has been laid out on application by prospective cotton planters. Rights of occupancy have also been

[60] REPORT OF THE COMMISSION ON CLOSER UNION OF THE DEPENDENCIES IN EASTERN AND CENTRAL AFRICA, p. 22.

[61] IBID., p. 315.

granted in various other districts for coffee-planting and general farming. The total area granted for agricultural purposes during the year under rights of occupancy was approximately 16,625 acres . . .

The small townships along the Central Railway have justified their establishment as is evidenced by the number of plots taken up during the year. In the nine trading centres 152 plots have been granted by public auction on rights of occupancy for 25 and 33 years at an average rental of 446 shillings per 10,000 square feet . . .

Leases of ginnery plots have been sold by public auction in various parts of the Territory, the upset price being 20 shillings per acre per annum for a five-acre plot. The rights of occupancy have been purchased at rentals varying from the upset rental in one case to as much as 1000 pounds per annum in another.[62]

Further, in 1926,

Eighty-seven plots for Missions or Mission School plots were granted during the year.

Rights of occupancy in respect of 722 trading plots were granted during the year. Many of these, however, do not represent new holdings but are the result of applications to convert Kiwanja holdings into rights of occupancy under the Land Ordinances.

The demand for cotton market sites continued and 172 rights of occupancy have been granted after public auction. Of this number 147 were in the Mwanza Province.

Fifteen sites for factories and go-downs have been disposed of by public auction; and in addition two go-down sites for petroleum storage have been taken up.[63]

It is the intention of the government that no further land shall be alienated for agricultural or pastoral purposes in that area which is reserved for the use of the Masai tribe, in the district of Tanga, in the districts of Usambara and Pangani north of the Pangani river, or in the cultivated areas of the Moshi and Arusha districts around Kilimanjaro and Meru. In these districts there is a large native population; and the excessive alienation made to settlers by the former German government has left little room for tribal expansion.[64] It is further proposed that no applications shall be entertained for grants in the Iringa and Rungwe districts until the question of affording transport facilities to the areas applied for has been settled.[65]

[62] REPORT FOR 1924, pp. 33-34.
[63] REPORT FOR 1926, pp. 50-51.
[64] REPORT FOR 1924, p. 33.
[65] REPORT FOR 1925, p. 58.

> In future, Government will itself select land which may be available for non-native settlement in those areas which are considered suitable for the purpose, and will then divide the selected areas up into agricultural or pastoral units over which Rights of Occupancy will be granted from time to time. This procedure does not denote any departure from the accepted principle that the rights and interests of the natives must be fully safeguarded.[66]

Professor Raymond L. Buell, in *The Native Problem In Africa,* adequately estimates the value of the present system of alienation in the Tanganyika Territory:

> The Tanganyika Land Ordinance, as it stands at present, accepts the principle of protecting native rights in the land, as prescribed in the Mandate, but it does not establish a procedure which will insure that the principle will be applied. If it is impracticable to install the system of land tenure which prevails on the Gold Coast or in Southern Nigeria, the Tanganyika Government might profitably follow the idea suggested by the Nyasaland Land Commission (which is being worked out in Uganda) of delimiting certain areas of the land as European reserves to which future alienations should be restricted.[67]

The same writer also says:

> By the end of 1925, the total amount of land alienated by the Tanganyika Government amounted to nearly 1,800,000 acres, compared with 7,680,000 acres alienated by the Government of Kenya. The present European population of Tanganyika is about 4,000 compared with 12,500 in Kenya. If the Tanganyika Government proceeds with a program of land alienation, its settler population will probably reach that of Kenya in a few years.[68]

### (e) In South-West Africa

In South-West Africa, the Lands Branch of the government was established in 1919, its principal factor being the Land Board of five members. As one of the chief problems in this territory is that of a water supply, an Irrigation Branch was also created.

Crown lands are now being disposed of under the Union of South Africa Land Settlement Act of 1912, as amended by the

[66] Report for 1928, p. 63.
[67] Vol. I, chap. xxix., p. 490.
[68] Ibid., p. 495.

Act of 1917 and the Land Settlement Acts Amendment Act of 1920, as applied to the territory by Proclamation No. 14 of that year.[69] These establish general regulations with regard to transactions in land. Stressing the necessity of the protection of native rights, they are quite similar to those in other mandated territories.

The Land Board recommends that farms allotted to settlers should be 5000 hectares in area in the middle districts, 6000 in the north, and 12,000 to 15,000 in the south, according to the carrying capacity of the veldt. A capital of at least five hundred pounds is required of all settlers; and it is advisable that they should be able to command from two to four times that amount.[70]

> The Administration is prepared to assist approved settlers by advances for:
>
> (1) The building of a dwelling-house; the maximum amount that can be advanced under this heading is 400 pounds.
>
> (2) Boring for water or for the construction of wells and dams.
>
> (3) The purchase of stock. Under this heading the maximum advance for the purpose is 750 pounds. Remission of rent for the second and third years of a settler's operation may be granted, where a settler has effected improvements of a permanent nature to the value of 10 per cent. of the prairie value of the holding allotted to him.
>
> The Administration is also prepared to consider applications from persons or companies desirous of ranching on a considerable scale, and for this purpose it is contemplated to advertise at an early date a few ranching blocks. The size of these ranches will depend largely on the districts in which they are situated, but it may be that each ranch will comprise approximately six ordinary farms. It is doubtful whether any such ranches will be advertised in the southern districts of the territory. The conditions under which the ranches will be allotted will be similar to those in force in the Transvaal, and will provide *inter alia* for occupation by representatives of the allottees, and the stocking of each ranch with a prescribed number of stock.[71]

The former German government had issued certain leases, under which the lessees were given permission to purchase if certain qualifications were met. The new administration has upheld these contracts.[72]

[69] OFFICIAL YEAR BOOK OF THE UNION OF SOUTH AFRICA, No. 6, p. 997.
[70] REPORT ON SOUTH-WEST AFRICA FOR 1920, p. 15.
[71] YEAR BOOK, No. 6, p. 997.
[72] REPORT FOR 1920, p. 15.

The competition for settlement farms is extremely keen. Since it is the Administration's policy not to allot farms until water has been found thereon and since the rate of settlement is thus limited to the rate at which water can be provided, progress in respect of land settlement has necessarily been somewhat slow, and it has not been possible to accommodate more than a comparatively small number of the applicants. Many people with sufficient capital, however, have purchased land direct from private owners and in many cases the prices paid would, four or five years ago, have seemed fabulous.[73]

The following table shows the granting of lands which has taken place in accordance with the Land Settlement Proclamation of 1920:[74]

| Year | No. of Holdings | No. of Settlers | Area in Hectares | Valuation in Pounds |
|---|---|---|---|---|
| 1920 | 169 | 203 | 1,595,873 | 144,364 |
| 1921 | 245 | 311 | 2,125,154 | 173,139 |
| 1922 | 169 | 216 | 1,163,600 | 125,451 |
| 1923 | 79 | 101 | 765,461 | 57,916 |
| 1924 | 123 | 157 | 1,047,322 | 78,949 |
| 1925 | 95 | 118 | 783,961 | 57,040 |
| 1926 | 127 | 140 | 1,085,295 | 83,200 |
| 1927 | 91 | 101 | 574,713 | 62,553 |
| 1928 | 44 | 48 | 340,398 | 41,713 |
| | 1142 | 1395 | 9,481,777 | 824,325 |

The noticeable decline in alienations for the year 1928 was the result of the coming of the Angola immigrant farmers, the Administration desiring to make adequate provision for them before allotting farms to other settlers. The demand for holdings has in no way diminished, there being keen competition for any holding which becomes available for allotment. The number of cancellations and surrenders of allotments has decreased, and in no case has such cancellation been due to financial embarrassment. Moreover, no lease has been allowed to lapse by efflux of time, lessees either having had their leases extended or having exercised their options to purchase their holdings.[75]

The following allotments have been made under the Crown Land Disposal Proclamation of 1920, most of them as additional

[73] REPORT FOR 1927, p. 6.
[74] REPORT FOR 1928, p. 46.
[75] IDEM.

grazing land for farms which were considered to be too small to afford a settler a decent living from his farming operations:[76]

| Year | No. of Holdings | No. of Settlers | Area in Hectares | Valuation in Pounds |
|---|---|---|---|---|
| 1921 | 32 | 36 | 209,096 | 19,685 |
| 1922 | 8 | 9 | 65,903 | 6,014 |
| 1923 | 16 | 18 | 78,723 | 6,944 |
| 1924 | 73 | 84 | 573,448 | 39,264 |
| 1925 | 57 | 60 | 286,917 | 22,296 |
| 1926 | 38 | 40 | 179,601 | 17,926 |
| 1927 | 27 | 27 | 132,912 | 12,955 |
| 1928 | 23 | 24 | 68,783 | 13,494 |
| | 274 | 298 | 1,595,383 | 138,578 |

Disposition has been made also of a number of township plots, either by tender or by public auction. The sale of these blocks is subject to the condition that the purchaser is obliged to erect a suitable dwelling or place of business within two years from the date of the sale. The demand for such building sites in Walvisch Bay has fallen off somewhat; but with the development of its port, there will always be a certain demand for ground suitable for business and residential purposes.[77]

This is the only mandated territory in which any land tax is levied, but here both natives and Europeans are subject to a small assessment, the rate varying with the location and the nature of the property.[78]

## 3. THE ACQUISITION OF LAND FOR PUBLIC PURPOSES

Although little material is available on the subject, there being none at all for the territory of South-West Africa, the acquisition of land for public purposes is too important a topic to be set aside as unworthy of discussion.

In British Togoland, the Public Lands Acquisition Ordinance of the Gold Coast Colony is applied. It allows the govermental acquisition of land for a purpose which is definitely for the welfare of the public, if proper compensation is made to the owner.[79]

By way of illustration,

[76] IBID., p. 47.
[77] IBID., p. 83.
[78] IBID., p. 28.
[79] REPORT ON BRITISH TOGOLAND FOR 1924, p. 38.

The land alienated by the Germans has been taken over by the British Government on the occupation. The following lands are therefore alienated:

(i) At Yendi a plot of land, one square mile, which is planted up for experimental purposes in forestry and is still being maintained.

(ii) At Kete-Kratchi the land on which the Government station is situated was presented to the German government by the Kratchi-hene and Elders.

(iii) At Ho and Kpandu the plots upon which the Government stations are situated, and similar areas, as in Yendi, for experimental purposes, which are being maintained, and small plots spread over the country upon which rest houses have been erected.

Since the occupation the following lands have been acquired free for Government purposes:

(i) At Yendi, one square mile for residential purposes and 800 square yards for a trade school.

(ii) At Ho, a plot of land, 245 acres in area, has been acquired by Government as a residential area and public offices, under the terms of an agreement made between the Head Chief and His Elders and the Administration. In the event of another Government taking over the Administration, this plot of land reverts to the Chief and his elders, who would then make a new contract with the incoming Government.

(iii) At Kpedschu, 16 miles south of Ho, situated on the Ho-Adidome Road, a plot of land has been temporarily acquired by the Agricultural Department for experiments in cotton.[80]

In the British Cameroons, by the Public Lands Acquisition Ordinance of 1917, the Government may appropriate any land required for a public purpose on payment of compensation for the land and its improvements. The Government may take possession six weeks after the notice has been published, gazetted, and served upon the owner or occupier of the land. All disputes as to title or compensation are settled by the Supreme Court; and a certificate of title is granted to the Government when all claims have been settled and certain other formalities fulfilled.[81]

In the Tanganyika Territory, the Land Acquisition Ordinance provides for the acquisition of land for public purposes, the manner in which compensation for such land is to be assessed and paid being prescribed. In practice, however, this Ordinance

[80] REPORT FOR 1923, p. 32.

[81] REPORT ON THE BRITISH CAMEROONS FOR 1922, pp. 57-58.

applies only to lands held in private ownership and not to lands held under the Land Ordinance of 1923, that Ordinance itself making provision for the recovery of land thereunder.[82]

## 4. ALIENATION AND ADMINISTRATION

Such is the problem of the alienation of land and the various restrictions which have been imposed to aid the native when he is thrown into contact with it. And all in all, it may be quite truthfully said that, to date at least, the protection of the interests of the African indigene in the land seems to have been uppermost in the policies of the administrations of the "B" mandates. Nor can the administration which the Union of South Africa is conducting in South-West Africa be condemned as yet for violation of this principle. It would seem, however, that in the future this Mandatory Power will break away from that policy. That the discussion of the problems of land tenure and alienation may be complete, therefore, this regrettable tendency will constitute the subject under consideration in the following chapter.

[82] REPORT ON TANGANYIKA FOR 1926, p. 57.

CHAPTER FIVE

# SHALL NATIVE SEGREGATION BE PERMITTED IN SOUTH-WEST AFRICA?

## 1. IMPORTANCE OF THE QUESTION

It is quite probable that the important question of the segregation of the natives in South-West Africa will constitute in the future one of the most discussed topics in the entire problem of the indigene and his relation to the land, the issue developing as the direct outgrowth of the attitude of the present government of the Union of South Africa, and the policy which that government pursues.

Before this discussion is begun, however, perhaps it should be emphasized that, as far as the mandated territories are concerned, it is only in South-West Africa that this problem has arisen. The government of the Tanganyika Territory opposes both the establishment of native reserves and the idea of segregation, really administering the area for the benefit of the aboriginals. The non-native population in British Togoland and in the British Cameroons is not sufficient to cause the development of any such issue.

After the conclusion of the World War, when the terms of the peace treaty were being arranged, it became apparent that it was the ardent desire of the Union of South Africa to annex the territory formerly constituting the colony of German South-West Africa. That desire was of course thwarted by the establishment of the mandatory system. Although it abided by the result of the negotiations and agreed to administer South-West Africa as a "C" mandate, the government of the Union of South Africa has nevertheless continued to hope for annexation; and the policies and practices that have been followed in the mandated area have been in general such as would have been pursued had that annexation actually taken place.

Outstanding among these policies has been the encouragement of the immigration of foreigners, who have taken up much of the land, though of course millions of acres are still available. It is an interesting travesty that of the 207,000,000 acres in South-West Africa only about 5,033,000 are set aside for the use

of the natives, in spite of the fact that under the mandatory system administration is supposed to be entirely for the benefit of the indigenous peoples. However, the injustice of this proportion is somewhat alleviated when it is remembered that of the entire area probably not over half is really suitable for cultivation.

In accordance with that policy of land settlement, the administration in South-West Africa has urged the confinement of its native peoples to certain areas. Although the desire to make available more land for non-native holdings is the real reason for the development of such a policy,[1] the administration has attempted to justify it on the following grounds:

> because of the necessity of removing native settlements from areas essentially European; the need of doing away with "black islands," which are small native reserves within white areas; the praiseworthy aspiration of providing healthier and more natural living conditions for the native population; and the advisability of establishing a means of more efficient control of native reserves.[2]

The question of the segregation of the native races has always constituted an important issue in the Union of South Africa. Practically unimpeachable arguments have been built up in support of the policy; on the other hand, a case almost equally as strong has been constructed by the opposition. As South-West Africa is administered as an integral portion of the territory of the Union of South Africa, it is only natural that the same arguments for and against segregation should be advanced there. With regard to the future of this mandated area, therefore, it is important that these arguments should be enumerated. The citation of pertinent quotations from the leading writers in the field during the last quarter of a century has been chosen as the method of presentation of this portion of the general land problem. Brief notice will also be taken of some of the chief policies advocated as substitutes for segregation.

[1] The problem of segregation is also arising to some extent in the towns and villages. A consideration of the scanty material available on the subject indicates that many black and white areas are already in existence in these settlements, and that consequently it will be possible to adopt a policy of complete segregation in these places much more readily than in the agricultural districts.

[2] REPORT ON SOUTH-WEST AFRICA FOR 1921, p. 13.

## 2. THE CASE FOR SEGREGATION

As an opening argument in the case for a policy of segregation, there has generally been established by its advocates a picture of the distress which may befall the natives if segregation is not accepted. The truth of the following statement can hardly be denied:

> It is unquestionably right . . . that enough land, good land, should be set aside for native use in those Highlands of Africa which are destined to be colonized by white men, while there is yet time. There is real danger, if this is not done, that the whole native peoples will be depressed by economic forces into a quasi-servile proletariat ministering to a white aristocracy, a result which can only corrupt both black and white, multiply poor whites and poor blacks, and end in revolution and the breaking up of laws. The real protection against this possibility is to give the native ample land on which to develop on lines of his own choosing, to adopt such of the white man's ways as he finds good, and to reject the rest, to preserve and develop what is good in his own customs and life instead of having it forcibly crushed out by transplantation, and above all to preserve that peculiar self-respect and freedom which comes from being independent owners of the soil, owning no man as master.[3]

Further, there should be noted the assertion of Cardinal Manning that:

> The land question means hunger, thirst, nakedness, notice to quit, labour spent in vain, the toil of years seized upon, the breaking up of homes, the misery of parents, children and wives, the despair and wildness that springs up in the hearts of the poor when legal force, like a sharp arrow, goes over the most sensitive and vital rights of mankind. All this is concerned in the land question.[4]

Those who advance the merits of segregation strengthen their picture of the dire results that may occur if sufficient land is not at once reserved for the natives, expropriation being allowed to continue unchecked, by quoting the words of the Reverend Edwin W. Smith, a former Northern Rhodesian missionary, with regard to the intimate relationship which the African considers existing between his land and himself:

[3] Cripps, Arthur S., AN AFRICA FOR AFRICANS. From the preface by Philip Kerr, pp. viii-ix.

[4] Quoted in Cripps, Arthur S., *op. cit.*, chap. vi., p. 61.

> A new site can never be the same to the people, for African religion is rooted in the soil, and bound to the parcel of ground hallowed by the presence of the dead. One needs to hear the pagan African's lament as to the piteous condition of their deceased parents and chiefs reduced to misery by the enforced migration of their subjects and children, in order to understand the firm attachment of the people to their land. Separation from their land means a severance between the dead and the living members of the community, with an inevitable slackening of the moral obligations which that communion entailed.[5]

The value of this native attachment to the land is brought out definitely in the following excerpt from Maurice Evans' *Black and White in South East Africa*:

> Back to the land is the cry in the older countries, where they have experienced the dire results of exaggerated city life, and the thought of the best among them is to replace, by more natural conditions, what has insidiously developed into a cancer in their national life. Here we have a people crying aloud against the divorce threatening them. Along the line of the genius of a race much may be done, much may be modified, wounds may be healed, and development and progress made possible; counter to it, dire distress and eventual destruction of the race ideal. Of infinite import and value to the Abantu race has been this clinging to the land and all that it implied. It has preserved them from the dissolution which a too ready compliance with the temptations held out by our civilization would have implied. The race still stands firm; its attachment to the land has saved it.[6]

In the next place, Mr. A. S. Cripps establishes a very strong point in favor of segregation when he says:

> Let us try to see dispossession, by the light of our own English history, as what it is—a lure, a blind, a curse to our Imperial Commonwealth! Let us awake to the fact that a million Rhodesian acres go a very small way in the provision of huge cattle-ranching estates for European colonists, but go a very great way in the provision of room-to-plough for African peasants.[7]

The Reverend F. B. Rand, writing in 1923, makes the assertion that:

> The white man has seized (and is still seizing the little that remains!) practically the whole of the land, and has so

[5] Quoted in Cripps, Arthur S., *op. cit.*, chap. iii., p. 30.
[6] Chap. v., pp. 150-151.
[7] Cripps, Arthur S., *op. cit., chap.* iv., p. 49.

rendered the territorial separation of the races an impossibility, unless indeed, he is prepared at this late hour to disgorge and make restitution. . . . The existing native reserves, we are told, are only too small because of the feckless and improvident agriculture. Let your correspondent take up a map and see the utter disproportion of the land allotted to white and black. Not one fiftieth of it is in the hands of the natives, and yet they outnumber the Europeans by five to one.[8]

Moreover, again quoting Mr. Cripps:

> Our native reserve land, already severely circumscribed under the settlement declared in our Reserves Order in Council of 9th November, 1920, is now threatened under the Government Notice of 18th May, 1923, by the prospect of a multiplication of alien immigrants holding some official capacity in connection with Church or State, whose business it may be to teach the unfortunate Reserve Native how to develop what reserve land has been left to him, not according to the adaptive and imitative genius of his own race, with its rich stores of traditional wisdom as to local conditions, but according to some superimposed foreign fashion.[9]

Turning away from this gloomy forecast of the situation which might arise under an extended policy of expropriation, those who favor segregation then predict the results of the establishment of a comprehensive policy based on their principles and ideals:

> The policy of territorial separation is the only policy that will make possible a home existence for the natives in their own homeland, for we know that however educated and however worthy the civilized native may become he cannot hope to find a home, or to feel at home, among the whites. . . .
>
> But in their own areas the natives will have their homes and their own home-life, without which human existence is indeed miserable. Those among them who long for the privilege of private ownership will be able to acquire land in freehold in localities set aside therefor, while those who cling to the old ways will be allowed to continue as before under their old system of communal land tenure.[10]
>
> If good and ample land can be set aside in the various territories of spacious South Africa in which the natives can live and move without let or hindrance; in which they can do

[8] Quoted in Cripps, Arthur S., *op. cit.*, chap. vii., p. 81.
[9] Cripps, Arthur S., *op. cit.*, chap. ix., p. 110.
[10] Nielsen, P. Quoted in Cripps, A. S., *op. cit.*, chap. vi., p. 61.

what work they like for themselves and for their own people; in which they can engage according to their individual desires, in all kinds of trade and commerce without the prohibitions of the white man's colour-bar; in which they can earn the wages that are governed by the laws of supply and demand only; in which they can build up after their own fashion courts of law and political councils for themselves; in which, in fine, they can live and work out their own salvation, unhurried and unworried by strange and impatient masters, then, surely, the natives of South Africa will have gained a great gain, far greater than any they can ever hope to win by putting their undeveloped strength against the organized resistance of the whites.[11]

Moreover, the Commission on the Closer Union of the Dependencies in Eastern and Central Africa says in its *Report*:

> Segregation is in many respects attractive. It would remove from the area of conflict many matters which have been the subject of acute controversy in the past. It would enable the political evolution of each community to proceed more rapidly on its own lines. The white areas could be granted from the outset a more complete and familiar form of self-government than is feasible otherwise.[12]

And in *Black and White in South East Africa,* Maurice Evans strengthens the case for segregation by declaring that:

> The great and fundamental advantage to the native would be that his home life and the conditions surrounding him from cradle to adolescence would be conserved as regards the best traditions and customs of his race in the past; that, as these necessarily changed, the best wisdom of the race, guided by the best the white man could give and devise, would be directed to make them sound and healthy. As the old ancestral controls weakened, fresh ones suitable to the race and its altered conditions would be gradually imposed, but always of such a nature as would tend to conserve the best in them and evolve the best possibilities at present dormant in the race.[13]

Throughout this volume reference has often been made to the work of Professor Raymond L. Buell. He comments on the case for segregation in the following words:

> Some South Africans have proposed an out and out policy of compulsory racial segregation. They believe that the fruits of racial inter-penetration in South Africa have been

[11] Evans, Maurice S. Quoted in Cripps, A. S., *op. cit.*, chap. vi., p. 62.
[12] P. 67.
[13] Chap. xi., p. 23.

bitter—that native life under European employers has been thoroughly demoralizing and that European society, based on primitive labor, is a "slave state" composed of a White Aristocracy superimposed upon a Black Proletariat—a system which has produced the Poor White on the one hand, and the Mulatto or Colored person on the other. They believe that a white civilization living in intimate dependence upon a primitive people of a different type of standards, outnumbering the whites four to one, is in danger of losing its economic, moral, and cultural standards, and that if universal intermarriage does not take place, a result which they would deplore, racial animosity and illicit miscegenation will inevitably develop. Thus the Segregationists favor the creation of separate areas in South Africa for the exclusive occupation respectively of blacks and whites, each maintained on a basis of an all-black or an all-white economy. The Black Area, under this theory, would eventually become economically and politically independent of the White Area. Neither race would be obstructed in its group development by the other.[14]

In addition, Professor Buell notices that:

> Friends of the native appear to be agreed that the native would socially be better off living on a farm of his own with his family than in the mining compounds.[15]

An equitable scheme of segregation draws praise in the following words of Dr. S. M. Molema, the Bantu historian:

> Such a scheme, if equitably carried out, would be highly satisfactory, and in that way can the dangers of "the native problem" that exists for the whites and "the foreign problem" that exists for the blacks be considerably minimized and perhaps successfully combatted. But let us not forget that an enlightened Segregation Policy implies Faith, not the egotistical Faith that insists on superimposing one's own Race's Kultur on a subject Race, but Faith in Freedom and so in the grant of Freedom for its self-development to that subject race. Creative Imperialism (of the higher or Christian type) is surely at its supreme height of power when, refraining from the temptation to mould temptingly plastic subjects, it affords them a scope and a sphere wherein to mould themselves.[16]

Dr. Molema emphasizes, however, that first and foremost, such a separation must be equitable, for only a just and fair division can provide the privileges of self-government and free constitutional life to both black and white.[17]

[14] THE NATIVE PROBLEM IN AFRICA, Vol. I, chap. ix., pp. 133-134.
[15] IBID., p. 135.
[16] Quoted in Cripps, A. S., *op. cit.*, chap. vii., p. 83.
[17] Quoted in Cripps, A. S., *op. cit.*, chap. i., p. 11.

Finally, Mr. Cripps, who has given much of his time and labor to a crusade for the improvement of the conditions of native life, commends the natives' own desire for areas in which segregation is the rule as the most important argument in favor of them. And certainly the force of that contention cannot be easily overlooked.[18]

For the successful operation of a system of segregation, it is necessary that the areas set apart in which natives can acquire land by purchase should be sufficiently large to support a community numerous enough to supply itself with all its needs for its social and economic life. In these native areas there should be some white supervision, as, for example, in the direction of education and government. Regulations which prevent the accumulation of large acreages by any one individual, and which prohibit speculation, should be established. Moreover, there exists, among others, a fundamental doctrine which, if it is carried out to perfection, will make inconceivable the existence of small black areas scattered among the white peoples.[19]

> There should be no violation by the white man of the areas set apart for the native. Only those would be admitted as residents into these reserves who were there primarily for the benefit of the natives, administrative officers, missionaries, and teachers. Trading licenses issued during pleasure and specifically conferring no vested interests might be allowed, but the idea is that the natives shall in time, under guidance, be fitted to fulfil all the duties pertaining to their separate existence.[20]

Such is the case which has been established in support of the segregation of the native races. Its worth is adequately summarized in the three following quotations, the first being taken from an article on *Native Races and Peace Terms,* by John H. Harris:

> The time has surely come when the white colonising nations should agree to set aside an area in each Colony or Protectorate for the exclusive use of the native inhabitants. But these areas to be successful must satisfy certain conditions; they must comprise the ancestral lands of the tribe; they must be adequate not merely for the present generation, but large enough to admit of tribal expansion, and, more import-

[18] Cripps, Arthur S., *op. cit.*, chap. vi., p. 68.

[19] Evans, Maurice S., BLACK AND WHITE IN SOUTH EAST AFRICA, chap. xi., p. 316.

[20] Cripps, Arthur S., *op. cit.*, chap. viii., p. 88.

ant than all is that these areas must be held by the tribes in secure tenure. The only white men permitted within the borders would be those administrators, missionaries, and merchants who seek only the welfare of the natives, and whose presence is mainly concerned with guiding the tribes in learning the task of a progressive administration of purely tribal affairs.[21]

The second is selected from an article by L. Marquard, entitled *The Native Question in South Africa*:

> The policy of separate areas for European and native has now been definitely embarked on, and there is no intrinsic reason why this should be unjust as long as ample opportunity is given to natives in the shape of increased territories and the establishment of a land bank to assist farmers. . . . If the policy of separation is unfairly carried out it will eventually have to be abandoned. Its only chance of success is its fairness.[22]

And the third and last is from the pen of that ardent advocate of segregation, Arthur S. Cripps:

> The policy of Segregation Areas is worth trying as a remedy for the grave and complex maladies in the African part of our Empire. . . . A first-rate Expropriation Policy may commend itself as worth imperial backing where a mere second-class makeshift scheme (with an illusory attraction of cheapness) may fail to excite enthusiasm outside the borders of the Colony concerned. A Segregation Policy, if it be worth trying, is worth trying well. We are not so rich in alternative expedients as to be able to court failure in this experiment of Territorial Segregation that we in South Africa propose to take the responsibility of making. The Land Question is a very serious question in our part of Africa. And a comparatively equitable Segregation Scheme of compact Areas, a Scheme pledged to no tyrannous orthodoxy about enforcing European tenure, a Scheme rising superior to the temptation to multiply petty regulations, (that so easily besets experiments of the sort in our own day), may do much to give a convincing assurance of our good faith as to the Land Question.[23]

## 3. THE CASE AGAINST SEGREGATION

The case against the segregation of the native races may be opened with the following attack upon it made by a prominent writer of some twenty-five years ago:

[21] CONTEMPORARY REVIEW, Vol. 109, June, 1916, p. 754.
[22] NINETEENTH CENTURY, Vol. 104, July, 1928, p. 26.
[23] Cripps, Arthur S., *op. cit.*, Appendix, chap. v., pp. 197-198.

> The segregation of the black race is not a point for which I would aim. It seems to me a dangerous experiment to lock him up in areas, give him political rights, and tell him to go ahead and make a civilised people. It seems to me the height of folly to give him rights and deny him privileges.[24]

He says further:

> Every now and then it is wildly suggested that the American negro should be emigrated back to Africa *en bloc*; and an almost extraordinary suggestion is for a division of the sub-continent between the two races in which the white should take all the high, healthy, temperate regions and the blacks the low, tropical parts unsuited for white occupation. The first objection is that to withdraw the blacks from among the whites, either in America or South Africa, would dislocate half the machinery of agricultural, domestic and industrial life, while a considerable number of white men would have to throw up lucrative employment in the black districts. Supposing, however, that the suggestion was only to apply to such natives as are still living tribally, or owning ground, then the difficulty would arise of allocating the two spheres. Altitude and temperate climate are not everything in South Africa; there are parts of Bechuanaland, for instance, which fulfil the conditions, but where only natives can make a living, while some of the portions of Central and East Africa which are marked out for black occupation already own white communities which would be hard to dislodge. These are only the more obvious and elementary objections to a scheme which is, in fact, outside the region of practical politics. We have not yet succeeded in introducing a successful method of land settlement into South Africa; so that it is in the highest degree premature to talk of moving whole communities from place to place and reconstructing the whole domestic economy of the sub-continent.[25]

A second witness, the Commission on the Closer Union of the Dependencies in Eastern and Central Africa, does not favor a policy of segregation, at least not at the present time. The Commission justifies its stand as follows:

> There are serious difficulties. First, it could never be complete. Secondly, it would be difficult to devise any satisfactory boundaries. Neither the black nor the white state would be strong enough to stand alone, and their common economic interests would necessitate some form of co-ordination. Thirdly, there would be great difficulty in splitting

[24] Colquhoun, A. R., THE AFRICANDER LAND, Part I, chap. vi., p. 102.
[25] IBID., chap. vii., pp. 125-126.

up the various services, such as medical, agricultural, and veterinary.[26]

In the third place, Dr. Schalkwyck in 1923 made the following rather cold-blooded estimate of the policy of segregation:

> By segregating the native you remove all the factors which tend to diminish his natural increase—excess of births over deaths. By reverting to his former mode of life, and by discarding European habits and customs the struggle for existence for him will become less. Polygamy will flourish again with resultant large families. He will be away from European diseases and strong drink. Moreover, the national sentiment will be revived and fostered, and the native will become a menace to the white man. Keep him dispersed among the whites, and he cannot organize. Keep him in touch with the Europeans and his natural increase will diminish. In many towns the death-rate of the non-European is only slightly less than the birth-rate, and is in any case, from two to five times higher than the European death-rate. It is an indisputable fact that the more the native adopts methods and customs of civilization the greater will be his struggle for existence and the more his natural increase will diminish.[27]

A fourth writer, the sociologist, Maurice Evans, sees as objections to segregation the facts that it pampers the native, that it may hinder the expansion of the white race, and that the possession of a home by the native will probably interfere with his coming out to work for the European, industrial development being thereby retarded.[28]

Professor Buell, in his comprehensive study of the problems of Africa in general, finds two objections to the theory of compulsory segregation.

> Friends of the natives have opposed it on the ground that the white man, being self-interested and having full power to impose the policy, would give to the natives only those areas which the white man could not use. Others have criticized it on the ground that the total separation of the bulk of the white from the black race in South Africa is economically impracticable. As we have seen, most of the gold mines could not be profitably exploited without cheap native labor. Practically all European industry and agriculture is dependent upon native labor.[29]

[26] REPORT OF THE COMMISSION ON THE CLOSER UNION OF THE DEPENDENCIES IN CENTRAL AND EASTERN AFRICA, p. 97.

[27] From THE FRIEND for October, 1923. Quoted in Cripps, A. S., *op. cit.*, chap. vii., p. 76.

[28] Evans, Maurice S., *op. cit.*, chap. xi., pp. 316-317.

[29] Buell, Raymond L., *op. cit.*, Vol. II, p. 968.

Finally, in the consideration of the case against segregation, it is of interest to note the attitude of the comparatively advanced negroes of the western world, as reflected in Article XII, Section 20, of the *Declaration of Rights of the Negro Peoples of the World,* drafted and adopted at the convention held in New York in 1920, at which Marcus Garvey presided as chairman:

> We protest against segregation districts, separate public conveyances, industrial discrimination, lynchings and limitations of political privileges of any Negro citizen *in any part of the world* on account of race, color, or creed, and will exert our full influence and power against all such.[30]

Thus is concluded the argument of those who oppose the segregation of the native races. That they have established a very powerful justification for their attitude is evident. Yet it would seem that the decision must be rendered in favor of a policy of segregation for South-West Africa, in spite of the fact that such a decision violates the very spirit of the mandatory system. But in truth, this "C" mandate is a virtual annexation; and, regardless of what may be said about "sacred trusts of civilization," it will continue to be administered by the Union of South Africa as having such status. In view of this unfortunate attitude of the administration, therefore, a policy of segregation will, in all probability, work out more successfully than any other for the good of the natives. If properly administered, it can prove of great benefit both to the indigenes and to the whites. Those who administer such a policy, however, must at all times remember that:

> If segregation is to be the settled policy . . ., that segregation must be fair to all races, giving adequate and secure tenure to every individual, regardless of colour. The land allotted to the natives must not merely be adequate; it must be of suitable quality; it must be healthy; and finally, it must include a fair share of drinking water for cattle and springs of water for human consumption. Less than this would constitute a grave injustice to the native inhabitants.[31]

## 4. SUBSTITUTES FOR SEGREGATION

### (a) The Glen-Grey System

One of the most outstanding substitutes for a segregation policy in South-West Africa would be the Glen-Grey system,

[30] Quoted in Buell, Raymond L., *op. cit.*, Vol. II, p. 968.
[31] Harris, John H., Africa: Slave or Free? Part III, chap. i., p. 119.

which has almost the same characteristics as segregation itself. This was established in the Union of South Africa by the Glen-Grey Act of 1904, embodying the opinions of Cecil Rhodes. Being a carefully planned scheme for the organization of a model reserve, it provided for the division of land into locations, each of which would be subdivided into allotments of about eight and a half acres. Every location was to be controlled by a Board of three resident landholders, and a certain number of the members of these Boards were chosen to make up the District Council, which was presided over by the Resident Magistrate. The location councils had the power to raise and expend money and to manage the location in general. Every landholder was required to pay a minimum rental of fifteen shillings annually; default might lead to eventual cancellation of title. The allotment, if all taxes were met, passed by primogeniture to male descendants, thus creating a system of freehold hereditable holdings in a reserve.[32]

A competent authority says of the Glen-Grey Act and the system established by it:

> The main object of this fundamental and archetypal measure was the encouragement of progressive tendencies by giving security and independence and stimulating enterprise. It aimed at conferring upon the native residents of proclaimed areas a form of Home Rule by means of councils which, though having considerable powers, were under the guidance of Government officers. The Act was not extended to the whole of the native territories in Cape Colony, but limited to portions like the Transkei, where the general features of the land and the character of its occupants favoured the experiment. In no other part of South Africa could it have been applied with such prospects of fair trial and success. It gratified the ambitions of many who were anxious to advance and who liked the idea of fixity because it released them from chieftainship and the tribal system and promised freedom to gain the reward of personal toil. It was a bit of benevolent class legislation full of safeguards. . . . The passing of the Act marked a direct step in the break from old traditions and, though it has not been found practicable to apply it generally in South Africa, it is probable that reform will eventually follow on its lines. The councils are advisory to the administration; they give the natives a voice in their own affairs, control of local funds, train them to constitutional methods of appeal, and serve admirably to

[32] Lugard, Sir Frederick D., THE DUAL MANDATE IN BRITISH TROPICAL AFRICA, chap. xv., pp. 326-327.

keep the Government in close touch with their feelings and aspirations.[33]

### (b) The Separation Of Land Ownership

When General Botha came into power as the Prime Minister of South Africa, he found the ownership and occupation of land throughout the territory in a state of almost hopeless confusion, there existing many systems of tenure, both just and unjust.

Prime Minister Botha realized that for the good of the country, some settlement should be made. He accordingly fell back upon the principal recommendations of the Lagden Commission of 1903-1905, and divided the 300,000,000 acres of land in South Africa between the white and the black populations.

A system based on the recommendations of the Lagden Commission is quite possible as a substitute for a policy of absolute segregation of the races in the mandated territory of South-West Africa; but in view of the state of civilization of the natives, it is hardly probable that a very high degree of success could be achieved. The Commission made the following recommendations:

(1) That in the interests of both Europeans and natives, purchase of land by natives should be limited to certain areas to be defined by legislative enactment.

(2) That whatever principles govern the question of purchase of land by natives should apply equally to the leasing of land by natives.

(3) That unrestrained squatting of natives on private farms, whether as tenants or otherwise, is an evil, and that the principles of the Cape Act of 1899 should be adopted for dealing with it.

(4) That purchase of land which may lead to tribal or communal or collective possession of land by natives, as opposed to individual ownership, should not be permitted.

The three main effects of the application of these recommendations would be to limit white and native holding to defined areas, to abolish irregular squatting, and to encourage individual ownership. Whatever the advantage or disadvantage of these recommendations, they certainly carried the native land question very much further from primitive conception.[34]

[33] Lagden, Sir Godfrey, The Native Races of the Empire, chap. i., pp. 30-31.

[34] Harris, John H., *op. cit.*, Part III, chap. i., pp. 110-111.

Finally, it should be remembered that in any system based on these recommendations there is not established a policy of segregation of peoples, but merely one of the separation of land ownership. There is absolutely nothing in such a system, (and there was nothing in the legislation which General Botha put into practice), to preclude the intermingling of the races for social, religious, or industrial purposes.[35]

### (c) The Policy Of Differentiation

The policy of differentiation, or voluntary and partial segregation, is advocated by those who consider that economic considerations make compulsory segregation impossible and even dangerous from the native standpoint. Under this policy there would be established a nucleus of native settlements adjacent to white communities. In all probability, the majority of the natives would continue, either temporarily or permanently, to work for Europeans; but a part of them would have some place which they could really call their home, in which they could lead their own lives, subject to some form of administration, as, for example, such a council as was established by the Glen-Grey Act.

According to Professor Buell, the policy of differentiation, if adopted, should mean that:

> Europeans will govern Europeans and Natives will govern Natives and questions affecting both must be decided upon by mutual consent.
>
> Economically whites and natives will always be dependent on each other. Consequently, segregation can never be complete. It must also be a gradual process; and it cannot be compulsory as far as the whites are concerned. The gradual development of native communities, housing a portion of the native population, is, on the other hand, possible.[36]

In theory, at least, no adverse criticism may be made of the policy of differentiation. On the contrary, it seems to be worthy of much consideration as a satisfactory substitute for a policy of complete segregation.

[35] Ibid., p. 112.
[36] Buell, Raymond L., *op. cit.*, Vol. I, chap. ix., p. 136.

### 5. The Question In The Future

Of such a nature is the problem of segregation in South-West Africa. It is quite probable that some such policy will openly be put into effect in this mandated territory within a relatively short period of time. And, considering the extreme backwardness of the indigenes of this region and the relations existing between it and the Mandatory Power, it seems that more benefit may accrue to the natives through the application of such a scheme than would otherwise be possible. Yet from a moral standpoint, in view of the pledge of the government of the Union of South Africa to administer the territory as one belonging to the native inhabitants, segregation, or any other such proposal, can hardly be justified.

CHAPTER SIX

# MISCELLANEOUS LAND PROBLEMS AND POLICIES

## 1. THE TOPICS DISCUSSED

The Land and Agricultural Bank of South-West Africa, the methods by which the natives are being encouraged to improve their agriculture, the systems of survey and registration, and the problem of the disposal of ex-enemy property constitute four subjects of vital importance in such a volume as this. The amount of material available, however, is too scanty to permit the presentation of a separate chapter for each of the four topics.

## 2. THE LAND AND AGRICULTURAL BANK OF SOUTH-WEST AFRICA

The constitution of the Land and Agricultural Bank of South-West Africa is modeled on that of the Land and Agricultural Bank of South Africa, established in 1912. The majority of the provisions of the act setting up the latter Bank have, with the necessary modifications, been made to apply to the new institution. It is operated and controlled by a Board of Management consisting of four members, who are appointed by the Administrator. One of them, who must be a member of the Public Service of the Union of South Africa, is delegated to act as Chairman of the Board.[1]

As to the objects and powers of the Bank, the following are given as the main purposes of its prototype, the Land and Agricultural Bank of South Africa:

> To make advances:
>
> (a) to farmers against the security of first mortgage on agricultural or pastoral land. The maximum advance is 2,000 pounds to any one farmer, and the advance cannot exceed 60 per cent of the value placed by the Central Board on the land;
>
> (b) to agricultural co-operative societies against the security of the joint and several liability of the members for the society's debts; and to guarantee the fulfillment of

[1] REPORT ON SOUTH-WEST AFRICA FOR 1922, p. 48.

contracts undertaken by co-operative societies individually or by some organization acting for a group of cooperative societies;

(c) to farmers to construct dipping-tanks, silos and other contrivances for the making or storage of ensilage and to erect boundary fences;

(d) to settlers who hold land from the Crown under lease or licence. Repayment of these loans is guaranteed by the Minister of Lands.[2]

Further, the South African Bank serves as a collecting agent for the government in the recovery of certain dipping-tank and fencing advances made by the state, receiving a commission of five per cent on all amounts so recovered. It has also been invaluable in the relief of distress caused by drought and flood.[3]

Under a proclamation in 1927, the Land and Agricultural Bank of South-West Africa was given power to advance to farmers the sum of 500 pounds sterling for the development of their water supply, rather than that of 250 pounds which had previously been allowed. The construction of dams is being contemplated by quite a number of farmers; and the Board is very glad to grant loans for this purpose, on the conditions that the site has been approved by the Government Dam Expert, and that the plans and specifications for the proposed structure have been passed by him.[4]

The Land Bank was given the power, also, in 1927, of advancing loans, not in excess of the sum of 250 pounds each, to farmers, other than settlers on Crown Land, for the purchase of good breeding stock. The period within which this loan must be repaid is set at five years, the rate of interest being fixed by the proclamation at five per cent per annum.[5]

Arrangements were concluded with the Lands Branch under which inspections of farms bonded to the Land Bank are to be undertaken in future by members of the Land Board, during the course of inspection work in connection with land settlement farms. In this way the necessity for separate inspections has been obviated and duplication of costs avoided. An inspection on behalf of the Land Bank has just been completed in the Grootfontein and Otjiwarongo districts. The cost works out at 30 shillings per farm,

[2] Official Year Book of the Union of South Africa, No. 6, p. 905.
[3] Ibid., pp. 905-906.
[4] Report on South-West Africa for 1927, p. 75.
[5] Idem.

> which is approximately what its inspections cost the Land Bank under the old method, only the Land Bank is not obliged to employ a permanent official for this purpose. Farms in several other districts are at present in course of inspection by directors of the Land Board. . . . It is not intended to have a yearly inspection made, as once every two years will suffice the needs of the Land Bank.[6]

By way of illustration of the actual operations of the Bank, one may examine the following figures, reflecting its activities for the year 1928:

There was advanced for improvements the sum of 8,521 pounds sterling; for the purchase of stock 10,440 pounds; for the redemption of Landwirthschaftsbank Bonds 13,260 pounds; for the redemption of Land Bank Bonds 57,002 pounds; and for the redemption of other bonds 20,011 pounds. The total sum granted to care for other debts amounted to 8,530 pounds, while 52,471 pounds went for the purchase of land. The majority of these advances were for sums between 1,000 and 2,000 pounds. Grants totaling 14,130 pounds were allowed for the development of additional water supplies. Finally, there was advanced the amount of 52,505 pounds, in satisfaction of 287 applications, for fencing purposes, the average grant being 27 pounds per mile.[7]

There can be no doubt that the Land and Agricultural Bank of South-West Africa is a praiseworthy institution, making possible as it does the provision of sufficient capital to supply the needs of temporarily embarrassed settlers. Such an establishment, manifesting the public interest in the welfare of the settler and in the development of the country, will prove invaluable in building up in South-West Africa a more contented people in a more prosperous land.

## 3. THE AGRICULTURAL EDUCATION OF THE NATIVE PEOPLES

Professor Raymond L. Buell, in *The Native Problem in Africa*, makes the statement that the economic welfare of the native is fundamentally dependent upon agriculture.[8] The truth of this assertion cannot be denied. Rather, it might be said further that, as the spiritual and moral well-being of the in-

[6] IBID., p. 74.
[7] REPORT ON SOUTH-WEST AFRICA FOR 1928, pp. 100-105.
[8] Vol. I, chap. xxviii., p. 473.

digene in large measure grows out of satisfactory economic conditions, it too is vitally concerned with the success of native agriculture. A consideration of the methods by which the administrations of the Mandatory Powers are attempting to encourage and develop that agriculture should therefore prove to be both interesting and profitable.

The administration in the British Cameroons has made no report as to the status of native agriculture in that mandated area. In British Togoland, however, there exists an Agricultural Staff, composed of a European Assistant Superintendent of Agriculture, whose headquarters are at Kpeve, which is the most centrally placed station; two African Assistant Overseers, who are in charge respectively of the Stations at Kpeve and Kpedshu; a junior officer (also an African) at Kpeve, who is available for general work and to act as an interpreter; and an Assistant Overseer and an Assistant Plant Inspector, who are in charge of the groups of laborers engaged in the sanitation of cocoa farms, the headquarters of these two officials changing as their work progresses. There are small stations at Ho and Kpando in charge of headmen. At Ho and Kpando also are to be found small plantations, while the Experimental Stations of the Department are located at Kpeve and Kpedshu.[9]

The Mandatory Power has made no statement as to the success which this Agricultural Staff has attained in its various labors. The mere fact that such a Staff has been established, however, indicates that the Mandatory Power is aware of the important part which native agriculture must play in the life and development of the territory, and that that agriculture is to be aided in every possible way.

In the Tanganyika Territory, there exists an Agricultural Department, composed of about 15 agricultural officers and 180 native agricultural assistants. At Mpapwa, a school is conducted by the Department of Agriculture, in co-operation with the Department of Education, in which native agricultural instructors are being trained. Such instructors tour the territory, demonstrating to the natives the best methods of cultivation. In general, it may be said that the work of this Agricultural Department is largely educational in nature. A monthly journal, *Mambo Leo,* is published in Swahili; and through it and various circulars, valuable information is conveyed to the natives

[9] REPORT ON BRITISH TOGOLAND FOR 1925, p. 17.

in very simple terms. Schools demonstrating plowing and various other modern agricultural methods have been established. Moreover, the native production of cotton and coffee is given every possible encouragement.[10]

> An interesting development is the adoption of ox-ploughs by the natives for communal cotton-growing, in one area. The plough in Africa will be the great liberator of women, who, by old custom, do all the planting with hand-hoes. It is obviously impossible to found a great agriculture on female labour, and yet it is hard for men to lay down their male vanity and take to women's work. But a plough is a fine new toy worthy of a man's attention; and in this way will come time and energy for the women to improve their housewifery and nurse their babies properly.[11]

It is the policy of the administration to encourage the natives to grow new crops, at the same time improving the cultivation of those which they already know.

> Given cheap transport, there is a very prosperous future for the agricultural tribes, though as yet the railways are entirely inadequate, and the tsetse renders animal transport impossible over large areas. The children in the village schools are taught to tend plants scientifically, and to grow trees too; for it is realized that the ruthless destruction of forests, if it is allowed to go on, will mean the death of the herds in the great heats for want of shade. Agricultural officers distribute good seed and demonstrate modern methods to the cultivators. The aim is both to improve the food crops for local use, and to stimulate the growing of crops for export. The main exports are steadily increasing and include sisal, coffee, hides, copra, and cotton. Of these the natives produce sisal, cotton, hides, and copra. The fine coffee is still a European crop grown by the planters in the Northern hills.[12]

In the past, a very distressing feature of the agricultural policy of the government of Tanganyika has been its neglect of the Amani Institute of Tropical Agriculture. This was established by the Germans in 1902, and constituted, with an experimental plant and a splendid laboratory and library, "a tropical scientific institute superior to anything in the British Colonies and Protectorates."

[10] Buell, Raymond L., *op. cit.*, Vol. I, chap. xxviii., pp. 473-477.
[11] White, Freda, MANDATES, chap. ix., pp. 119-120.
[12] IBID., p. 119.

Owing to lack of funds, this Institute, which ought to be the central research station for all British East Africa, is practically derelict. One solitary Kew gardener, with a tiny squad of native labourers, tries to keep it from crumbling to pieces, but can do little but fight the encroaching weeds.[13]

Professor Buell says of this:

The greatest reproach against the agricultural policy of the Tanganyika Government is the fact that it allowed the Agricultural Institute at Amani, probably the leading scientific institute in the tropics, established by the Germans in 1902, to fall into decline. The East Africa Commission reported (*Report of the East Africa Commission,* Cmd. 2387, p. 85):

"In spite of the efforts of successive Secretaries of State for the Colonies, this world-famous research institution is, for all practical purposes, lying derelict, its laboratories unoccupied, its costly apparatus dismantled, the living quarters deteriorating, the magnificent and priceless collection of books and scientific records and specimens unused. Instead of supplying the five territories in particular, and the scientific world in general, with contributions to their knowledge of tropical plants, soils, and insects, of the greatest scientific and economic importance, its only output at present consists of penny packets of seeds."[14]

At the present time, however, a movement is under way to re-open the Amani Institute, the cost of its maintenance being borne jointly by the East African territories.

Certainly progress has been and is being made in the native agricultural methods of the Tanganyika Territory. It is to be hoped that this development will continue, for the large amount of land suitable for agriculture in this mandated area causes this to be a matter of extraordinary importance.

With regard to South-West Africa, the following excerpt gives a very concrete picture of the agricultural policy in that territory:

Excellent results have been achieved at the Gammans Agricultural School, though operations have been somewhat hampered owing to lack of water. However, a large dam is in course of construction and is now practically complete. This will contain a sufficient supply of water to enable a large strip of soil to be placed under irrigation and it will then be possible to train students in all branches of farming there. The institution has become so popular that pressure

[13] IBID., p. 120.

[14] Buell, Raymond L., *op. cit.*, Vol. I, chap. xxviii., p. 476.

has been brought to bear on the Administration to erect similar schools in other parts of the Territory and the practicability of establishing three more schools in the Otjiwarongo, Keetmanshoop, and Gobabis districts is receiving consideration. The schools will be run on the same lines as the Gammans school, which is open to Europeans only. Students must be at least 16 years of age and must have passed the sixth standard. The school course covers two years and students must then serve for one year under a progressive farmer. If they are then certified to be quite suitable, the Administration will consider them for settlement farms. This policy affords a good prospect for the promising youths of the country.[15]

In summary, it may be said that the Mandatory Powers seem to be giving their best attention to the problem of agricultural education; and that in this very important field broad strides are being taken. There is good reason to believe that this progress will be even greater in the future.

## 4. SURVEY AND REGISTRATION

The question of the survey of land and the registration of title to that land is clearly a matter worthy of mention, involving as it does the establishment of clear and definite claims to property.

Each of the mandated territories under discussion has some sort of a survey organization. South-West Africa, for example, employs four whole-time surveyors. The size of the Department in Tanganyika varies with the amount of work which is in progress, survey being undertaken mainly of farms and ex-enemy estates, and of residential, commercial, and native plots in different townships.

An Ordinance was passed on the 22nd June, 1928, for the registration and licensing of land surveyors in the Territory. This Ordinance was enacted to recognize and protect the practice of the profession of land surveying in the Territory, and at the same time to protect the public against unqualified persons who may offer themselves as surveyors of land. Until its enactment there was no local legislation which contemplated surveys by persons other than Government survey officers, and the only relevant Ordinance in force was the brief Survey Ordinance, No. 10 of 1921, giving power to such officers to enter upon lands. The Land Surveyor's Ordinance, which does not apply to surveys made by

[15] REPORT ON SOUTH-WEST AFRICA FOR 1928, p. 43.

> Government officers, first prohibits unlicensed persons from making for reward surveys of any land for the purpose of ascertaining its boundaries. It further provides that a survey shall not be accepted for the purpose of the registration of a title to land unless it is made by a licensed surveyor. A licence will be issued by a Board of Control after examination, or upon production by the applicant of certain other evidence of his qualifications. A register of persons licensed will be kept in the *Gazette* in order that the public may be informed who are entitled to practice under this Ordinance. Control over the professional conduct of surveyors will be given to the Board, whereby a surveyor's licence may be suspended or cancelled in any of the events mentioned in that clause.[16]

With regard to the registration of documents, the German system, which was applied almost universally in these territories when they constituted a part of the German Empire, provided for the registration of title in a *Grundbuch,* such registration assuring an indefeasible title. In some districts there existed *Land Registers,* which were available for non-natives, but which appear to have been for purposes of record only and as a preliminary to the establishment of a *Grundbuch.* Entry in a *Land Register* was less formal than entry in a *Grundbuch;* and it carried no assurance of an indefeasible title.[17]

In the territory which is now British Togoland, the registration of landed property was practised during the German occupation, but has been neglected since the World War. Provision for such registration is made in the laws of the Gold Coast Colony which apply to British Togoland, however, and it is to be hoped that some action will be taken on the matter in the near future.[18]

Registration in the British Cameroons is cared for by the Land Registration Ordinance of 1915, making the registration of instruments affecting land generally compulsory. Section Twenty-Two of this Ordinance provides that:

> Every Crown grant executed after the commencement of this Ordinance, and every instrument affecting land the subject of a Crown grant or whereby land is granted by a native to a non-native executed after the commencement of this Ordinance shall be void, unless the same is registered

[16] REPORT ON TANGANYIKA FOR 1928, p. 65.

[17] REPORT ON TANGANYIKA COVERING THE PERIOD FROM THE CONCLUSION OF THE ARMISTICE TO THE END OF 1920, p. 71.

[18] REPORT ON BRITISH TOGOLAND FOR 1923, p. 33.

within sixty days from the date thereof: Provided that the Registrar may extend such period of sixty days to six months in the case of an instrument executed in Nigeria and to twelve months in the case of an instrument executed elsewhere, whenever he shall be satisfied that registration has been delayed without default or neglect on the part of the person acquiring the right or interest in the lands in question. A Crown grant includes every grant, conveyance, lease, or mortgage by or on behalf of His Majesty or of the Government.[19]

The situation in the Tanganyika Territory is pictured in the following extract:

> From the point of view of immediate and practical considerations, we are at present struggling under the greatest difficulties in dealing with any privately-owned land, owing to the lack of numerous title deeds and records. While certain German documents of great value have been recovered, there is nevertheless a general absence of registers and plans essential for a proper handling of such an enormous problem as that presented by the former German properties throughout the country;[20] and a great amount of work will be necessary before the survey of properties and scrutiny of alleged titles will have reached the stage where the possible tenant can feel that his right is clearly and satisfactorily established. Meanwhile, the former enemy properties have to be dealt with as seems possible in each case, while the problem is also frequently complicated by the necessity of handling estates of such Arab or Swahili owners as may die. Some prompt action is essential in such cases, unless properties are to be allowed to fall into decay, while an increasing area of valuable land goes into Chancery. The land question, in fact, must be regarded as one of urgency, and an immense amount of work will be required from the Legal, Land, and Survey Departments before the matter can reach at all a satisfactory stage.[21]

In 1925 an Ordinance was passed providing for the registration of title to land acquired by a native without the formality of a survey. This applies particularly to those lands, primarily near or on the coast, which have been held by natives for many years without documentary title.[22]

[19] REPORT ON THE BRITISH CAMEROONS FOR 1922, p. 57.

[20] The *Grundbucher* of Tanganyika were found in April, 1921.

[21] REPORT ON TANGANYIKA COVERING THE PERIOD FROM THE CONCLUSION OF THE ARMISTICE TO THE END OF 1920, p. 70.

[22] REPORT ON TANGANYIKA FOR 1925, p. 63.

The diversity of the field which is covered by the Registration Department of South-West Africa is indicated in the following table:[23]

| Description of Document Registered | Number Registered 1927 | 1928 |
|---|---|---|
| Deeds of Grant | 93 | 86 |
| Certificate of Registered Title | 26 | 35 |
| Certificate of Substituted Title | 33 | 33 |
| Certificate of Consolidated Title | 4 | 4 |
| Deeds of Transfer | 401 | 495 |
| Special Mortgage Bonds | 413 | 468 |
| Notorial Bonds | 28 | 24 |
| Substitutions of Debtors under Bonds | 12 | 22 |
| Cessions of Bonds | 86 | 92 |
| Cancellations and Part Payments of Bonds | 383 | 475 |
| Antenuptial Contracts | 100 | 117 |
| Settlers' Leases and Amendments thereof | 142 | 255 |
| Cessions of Settlers' Leases | 34 | 40 |
| Miscellaneous Deeds and Documents | 571 | 605 |

It is evident that any discussion of this subject could go little further without becoming more technical than is desirable in a general survey of the problem. The statements here made and the examples here cited, however, present the chief features of the question in more or less summary form.

## 5. THE DISPOSAL OF EX-ENEMY PROPERTY

The disposal of ex-enemy property, that is, that property which belonged to the nationals of the former enemy states, in these mandated territories, is provided for under Article 297 of the Treaty of Versailles. The principal provisions of this article are:

> Subject to any contrary stipulations which may be provided for in the present Treaty, the Allied and Associated Powers reserve the right to retain and liquidate all property, rights, and interests belonging at the date of the coming into force of the present Treaty to German nationals, or companies, controlled by them, within their territories, colonies, possessions and protectorates, including territories ceded to them by the present Treaty.
>
> The liquidation shall be carried out in accordance with the laws of the Allied or Associated State concerned, and the German owners shall not be able to dispose of such property, rights, or interests, nor to subject them to any charge without the consent of that state.

[23] REPORT ON SOUTH-WEST AFRICA FOR 1928, p. 89.

German nationals who acquire *ipso facto* the nationality of an Allied or Associated Power in accordance with the provisions of the present Treaty will not be considered as German nationals within the meaning of this paragraph.

The price or the amount of compensation in respect of the exercise of the right referred to in the preceding paragraph will be fixed in accordance with the methods of sale or valuation adopted by the laws of the country in which the property has been retained or liquidated.[24]

In the case of a Power which so agrees in the Treaty, the proceeds of such sale of ex-enemy property shall be credited to the Reparations account of the Power of which the former owner is a national, through the Clearing Office established by the Treaty. If a Power has not accepted such a provision:

The proceeds of the property, rights, and interests, and the cash assets, of the nationals of Allied or Associated Powers held by Germany shall be paid immediately to the person entitled thereto or to his Government; the proceeds of the property, rights, and interests, and the cash assets, of German nationals received by an Allied or Associated Power shall be subject to disposal by such Power in accordance with its laws and regulations and may be applied in payment of the claims and debts defined by this Article . . . . . Any property, rights and interests or proceeds thereof or cash assets not used as above provided may be retained by the said Allied or Associated Power and if retained the cash value thereof shall be dealt with as provided in Article 243.

In the case of liquidations effected in new States, which are signatories of the present Treaty as Allied and Associated Powers, or in States which are not entitled to share in the reparation payments to be made by Germany, the proceeds of liquidations effected by such States shall, subject to the rights of the Reparations Commission under the Present Treaty, particularly under Articles 235 and 260, be paid direct to the owner. If on the application of that owner, the Mixed Arbitral Tribunal, provided for by Section VI of this Part, or an arbitrator appointed by that Tribunal, is satisfied that the conditions of the sale or measures taken by the Government of the State in question outside its general legislation were unfairly prejudicial to the price obtained, they shall have discretion to award to the owner equitable compensation to be paid by that State.[25]

[24] Martin, Lawrence, THE TREATIES OF PEACE, Vol. I, p. 180.
[25] IBID., p. 182.

In British Togoland ex-enemy property has been dealt with under the Enemy Property Control and Disposal Proclamation, issued on July 28th, 1922. By it provision was made for the preparation of Schedules, these being lists of ex-enemy properties available for disposal. The following illustration is taken from such a document:[26]

| No. | Description of Property | Estate or Interest | Firm |
|---|---|---|---|
| 1. | A piece of land with all buildings thereon at Ho, lately in the occupation of the Deutsche Togo-Gesellschaft, specified as Plot No. 1, and as approximately delineated in Plan marked "A, Enemy Property, Togoland," signed by the Controlling Officer, Enemy Property, on the 27th January, 1922. | All the right, title, and interest held on the 28th day of January, 1916, by the Deutsche Togo-Gesellschaft. | Deutsche Togo-Gesellschaft. |

Such was the machinery set up for the disposal of ex-enemy property in British Togoland. So well did it function that by 1927 all the ex-enemy properties in this mandated territory had been sold.[27]

The principal properties of this nature in the British Cameroons were the 28 plantations in the Cameroons Province, which lie for the most part on the lower slopes of the Cameroon mountain and between it and the sea. Their total area is about 245,000 acres, some 45,000 acres being cultivated.

> Within these areas there are the native reserves of Buea and other villages. The main crop is cocoa, with rubber, bananas, and oil palms as secondary crops. A large amount of capital has been sunk in these undertakings, and expensive machinery for curing the cocoa has been installed in several plantations. As a whole they are wonderful examples of industry, based on solid scientific knowledge. Throughout one cannot fail to see evidence of the forethought and method with which the work had been planned. Nothing was left to chance. There was a careful system of Government supervision in force, and whenever any practice that was inimical to the general progress of the plantations was noticed it was suppressed by authority. A committee of planters sat from time to time and discussed the experi-

[26] REPORT ON BRITISH TOGOLAND FOR 1924, p. 52.
[27] Permanent Mandates Commission, MINUTES, Twelfth Session, p. 179.

ments and practical work of the plantations, and made recommendations.[28]

The policy which the Administration under mandate planned to pursue with regard to the plantations is shown in the following quotation from the *Report on the British Sphere of the Cameroons*:

> On the fate of these plantations will depend to a large extent the future prosperity of the Victoria Division. Provided that due allowance is made for the requirements of the natives, the plantations should be taken over by European and American companies, which alone will have sufficient capital and experience to maintain them at their past high level of efficiency and preserve the good name of the Cameroons for the high quality of its cocoa. It will be impracticable to split up the plantations into small plots for native owners. Without capital it would mean that the buildings and machinery would fall into ruins, entailing enormous losses, and without the necessary experience disease would soon spread, and the cocoa would be destroyed. The resources of civilisation must, therefore, be brought to the aid of the native and the plantations sold to companies able to develop them. This policy will be really in the best interests of the natives of the Province.[29]

In accordance with this policy, these plantations were disposed of at public auction in London, practically all being sold. In November, 1924, the discrimination against ex-enemy purchasers was removed. From then on the majority of the properties were purchased by ex-enemy nationals, who now outnumber the subjects of the Mandatory Power in the territory.

> It is satisfactory to record that the relations between the two sections have been altogether amicable. That no differentiation has been made as to the import of goods from ex-enemy countries is clearly shown by a glance at the customs statistics, which reveal that, whereas the value of imports has risen five times, the import duties have risen but two and a half times. The difference is due to the fact that all building materials, plant, and machinery, of which the Germans have imported vast quantities for reconstruction purposes, are admitted duty free, whatever be the country of their origin.[30]

[28] Cmd. 1647, p. 62.
[29] IDEM.
[30] REPORT ON THE BRITISH CAMEROONS FOR 1925, p. 63.

The tenure acquired by the purchasers is, in most cases, full ownership, subject to certain restrictions which are defined in the conditions of sale. In some few cases, however, the tenure gained is leasehold, with an option to purchase the full ownership on agreed terms.[31]

In the territory which now constitutes Tanganyika, a Custodian of Enemy Property was appointed in March, 1917, to control, protect, and preserve the assets of all enemy subjects and corporations. As the British advanced from the north, all enemy produce was collected by a Controller of Enemy Merchandise appointed by the military authorities. Stocks of cotton, rubber, sisal, and coffee were accumulated. Later, however, this office was absorbed by the Department of the Custodian of Enemy Property.

> Strenuous efforts were made to secure shipping for the produce, but this was found to be extremely difficult owing to the urgent military requirements for shipping then existing. As a consequence considerable deterioration of the stocks ensued. Some stocks were disposed of locally, and the balance gradually despatched to the London market, where satisfactory prices were obtained.[32]

A short time later, there were appointed an Inspector of Plantations and two Assistant Inspectors, who, with a view to the conservation of the estates and the buildings, machinery, etc., thereon, at once made efforts to lease temporarily such estates as were workable, and to arrange for caretakers to be placed in charge of the others. All enemy owners or agents who had remained on the estates were permitted to continue to reside there, and were allowed to manage the estates, subject to the general control of the Custodian.[33]

> The principal industry of the Northern Area was the cultivation of sisal. The leases of these estates were thrown open to public tender, and although quite satisfactory rents were obtained, it is to be regretted that owing to the uncertainty of the period of tenure and the heavy demand on the British population of the neighbouring Protectorates for military operations, the majority of the lessees were aliens. Every lease contained a proviso that the tenant should clean and replant an area equal to that from which sisal was cut, with the result that not only was there a satisfactory output

[31] REPORT ON THE BRITISH CAMEROONS FOR 1924, p. 26.
[32] REPORT ON TANGANYIKA FOR 1920, p. 72.
[33] IDEM.

of sisal, whilst a considerable income was credited to the estate accounts, but the productivity of the estates was maintained. The difficulties in obtaining shipping very seriously affected the lessees of the sisal estates, and led to a great congestion of sisal in the Tanga stores which continued for a period of two years.

Whenever funds were available they were utilised to maintain and keep clean as far as possible the coffee and cocoanut estates.[34]

In the Central and Southern areas, the lengthy duration of military operations seriously handicapped the leasing of the plantations. Therefore little could be done beyond conserving such assets as remained and collecting such produce as was to be found. Later, however, it was found possible to grant a number of leases of considerable areas for the cultivation of cotton, these leases being for seasons only. Highly satisfactory results were achieved.[35]

The fact that at the end of 1928 only one of these plantations remained unsold is a striking testimonial to the value of this system.[36] The following statement is typical of the transactions which have occurred under it each year:

> Of the ex-enemy properties scheduled for sale only 3 plantations and 1 town plot remained unsold at the end of 1927. During the year, 75 properties were disposed of, realising 45,278 pounds. The properties which are considered to be ex-enemy-owned but which have so far, owing to insufficiency of title, not been scheduled total 52. The amount realised by the sale of all properties up to the end of 1927 was 1,324,945 pounds. Purchasers have met their installment obligations in all instances.
>
> The number of estates scheduled for liquidation and dealt with increased to 911, the total amount expended to 31st December, 1927, in payment of claims therein being 825,450 pounds. A further sum of 11,498 pounds has been paid to claimants against the German Government based on formal awards made by the Anglo-German Mixed Arbitral Tribunal. Eleemosynary payments to German nationals during the year amounted to 10,063 pounds, and amounts released during the same period to former owners who are no longer ex-enemy nationals totalled 4,373 pounds.[37]

[34] IBID., p. 73.
[35] IDEM.
[36] Permanent Mandates Commission, MINUTES, Fifteenth Session, p. 117.
[37] REPORT ON TANGANYIKA FOR 1927, p. 87.

With regard to ex-enemy properties in the Tanganyika Territory, Professor Raymond L. Buell makes the following comment:

> The Tanganyika Government was obliged not only to restore the revenue and trade of the country, but also to liquidate claims which individuals had against the German Government and to liquidate ex-enemy property. The German plantations, totaling about eight hundred and sixty estates, were for a time held by the government, but under the direction of a custodian of enemy property, a total of 2,151,100 acres had been sold by the end of 1925 for a sum of 1,381,327 pounds. In the auctions for these holdings, Germans were not allowed to bid as they were in the British Cameroons. It is understood, nevertheless, that some Germans purchased property through Greek and Indian "dummies." While the majority of these holdings were acquired by Britishers, Greeks and Indians also made large purchases. About ninety per cent of the property in Dar-es-Salaam is now in Indian hands. After the settlement of German claims against the estates, the sums derived from the sale of the plantations will presumably be credited by the Reparations Commission against Germany's reparations account.[38]

The Ex-Enemies Restriction Ordinance of 1922 forbade the entry of ex-enemies into the Territory without the permission of the Governor. However, this Ordinance expired in June, 1925, and it was then considered that:

> as such persons were allowed free entry into the Territory upon the same terms as others, it would be unreasonable to maintain the restrictions on the holding of land by them. An Ordinance entitled the Ex-Enemies (Land Holding) Repeal of Restrictions Ordinance was accordingly enacted in November, 1925, which removed the surviving prohibitions affecting ex-enemies and relating to the holding of land.[39]

Tenants on temporary leases paying reasonable rentals were found for business premises and township houses almost as rapidly as they were vacated. In general, all those buildings which are empty are of sound and substantial construction, and will form a very valuable asset to the territory in the future.

Quick disposal was made of movable ex-enemy property. The stocks of trade goods belonging to the various commercial houses were sold at public auction, all finding a very ready sale

[38] *Op. cit.*, Vol. I, chap. xxvi., p. 436.
[39] REPORT ON TANGANYIKA FOR 1925, p. 58.

as most of the articles were essential to the life of the community. However, these stocks were found to be relatively low.[40]

In order to complete this section on ex-enemy property, it is necessary to include the following excerpt, Article 438 of the Treaty of Versailles, which refers to the subject of the Mission properties in the ex-enemy states:

> The Allied and Associated Powers agree that where Christian religious missions were being maintained by German societies or persons in territory belonging to them, or of which the government is entrusted to them in accordance with the present Treaty, the property which these missions or missionary societies possessed, including that of trading societies whose profits were devoted to the support of missions, shall continue to be devoted to missionary purposes. In order to continue to ensure the due execution of this undertaking the Allied and Associated Governments will hand over such property to boards of trustees appointed by or approved by the Governments and composed of persons holding the faith of the Mission whose property is involved.
>
> The Allied and Associated Governments, while continuing to maintain full control as to the individuals by whom the Missions are to be conducted, will safeguard the interests of such Missions.
>
> Germany, taking note of the above undertaking, agrees to accept all arrangements made or to be made by the Allied or Associated Government concerned for carrying on the work of the said missions or trading societies and waives all claims on their behalf.[41]

Such, then, are the methods by which the property of the nationals of ex-enemy states has been assimilated under the mandatory system. This particular phase of the general land problem is in truth a new development; but it should be remembered that never before have the conquering nations been forced to act under the light of an international public opinion. It is to be hoped that this is but one of the many more just and more equitable standards for post-war settlements which the future is to bring as a result of the late revolution in international relations and international administration.

[40] REPORT ON TANGANYIKA FOR 1920, p. 73.
[41] Martin, Lawrence, *op. cit.*, Vol. I, p. 261.

## 6. MISCELLANEOUS PROBLEMS AND THE FUTURE

There can be no doubt that the problems which have been considered in this chapter are of the utmost importance, and that they will continue to be so in the future, with the exception, of course, of the question of the disposal of ex-enemy property, which diminishes each year as this disposition nears completion. The Land and Agricultural Bank of South-West Africa, the agricultural education of the native peoples, and the systems of survey and registration will always be matters of significance. And if present policies are continued, it would seem that there must undoubtedly be achieved a very high degree of success in the administration of these phases of the general land problem.

CHAPTER SEVEN

# CONCLUSION: A FINAL WORD ON THE LAND PROBLEM

## 1. THE LAND PROBLEM REVIEWED

It is now in order to bring together in summary form the essential portions of the various land problems which have been presented in this volume.

In the first place, there was considered the question of land tenure. It was found that the communal ownership of land is characteristic of native life, private ownership having come to be practised to some extent, however, in the last few years, as sale and lease have become more common. Further, the various classifications of land, (as tribal, Stool, family, and individual), were discussed, the point being made that the fulfilment of tribal obligations is still a prerequisite to individual freedom of occupation. Also, comment was made upon the development of lease and the gradual extinction of the practice of mortgage. Finally, the conclusion was drawn that the existing systems of native tenure, which are just and established, should be upheld.

In the second place, it was seen that various restrictions have been imposed on the natives of the mandated territories with regard to the alienation of their land, no such transactions being permitted unless they are first approved by the Administration. These restrictions were commended. It was also pointed out that land may be acquired for public purposes if proper compensation is made.

In the third place, it was noted that the Administration of the territory of South-West Africa has demonstrated a regrettable tendency to subject the major portion of the area to exploitation by non-natives, in direct violation of the principles of the mandatory scheme, the native inhabitants being confined to certain districts. The arguments for and against segregation having been presented, it was decided that, in view of the persistence of the Mandatory Power in considering the area almost as an annexed region, the application of such a policy would probably prove to be of considerable benefit to the native peoples.

Finally, a discussion was given of the Land and Agricultural Bank of South-West Africa and its various loans and advances to financially embarrassed settlers and farmers; of the encouragement of native agriculture, through demonstration schools and other educational methods; of the systems of survey and registration, by which title to property is firmly established; and of the disposal of the property of ex-enemy nationals, this property being sold at auction, with the proceeds usually going to the reparations account of the government of the former owner. All of this work was praised; and it was urged that the Mandatory Powers see to it that these activities, which have the promotion of native welfare at heart, are maintained.

In brief, then, the point of the entire question is whether the land shall be allowed to remain in the possession of the native, whether it shall be taken by government, or whether it shall be permitted to pass into the hands of non-native interests. The importance of the maintenance of native title has been emphasized and the hope voiced, as it is again, that under the mandates system the land will be regarded entirely as the property of the indigenous peoples, being administered accordingly, with the pecuniary interest of the Mandatory Power involved constituting merely an incidental factor.

## 2. PRESENT PROBLEMS AND FUTURE POLICIES

There can be little doubt that the land problems which vex native areas at the present time will continue to exist in some form or fashion; but, in all probability, the policy which is to be pursued by European powers in Africa in the future will be, at least in theory, entirely one of trusteeship, such a policy being the outgrowth of the present attitude of international public opinion toward the administration of backward areas. One of the basic principles under such a system will call for the preservation of the land for its native inhabitants, for whom alone its natural riches are to be developed. Both European exploitation and the rise of a privileged land-owning class within the native communities themselves must be prevented.[1] In this connection, it should be noted that:

> The greatest danger for everybody would be to create a landless peasantry in the tropics. Here men will surely remember the lessons of the French and Russian Revolu-

[1] Morel, E. D., AFRICA AND THE PEACE OF EUROPE, Part. II, chap. v., p. 52.

tions, that those whose work is with the soil can never forget it; that sooner or later, when a leader comes and the day, when courage wakes, or the heart breaks, they will rise and take their lands again. And color hatred would be added to the horrors always involved in a peasant revolt.[2]

The Conference of the Governors of the East African Dependencies in 1926 laid down the following conclusions as to the proper methods of dealing with the land of the native inhabitants:

(1) Whenever a native population exists, sufficient land should be secured to it as to afford full opportunity for economic stock breeding and dairying, or for the production of crops according as the tribal bent is for pastoral or agricultural pursuits.

(2) European colonisation should be encouraged wherever the climate is suitable and adequate areas are available for settlement, without depriving the existing native population of sufficient land for its own use.

(3) The area of land reserved for a native tribe should be sufficient to accommodate the whole tribe together; so that where a tribal organization exists it may be preserved and improved; and that where none exists, some form of native institutions may be gradually developed.[3]

Of special promise is the declaration made at this Conference by the Governor of the Tanganyika Territory. He accepts these conclusions, subject to the reservation that the land policy of Tanganyika as defined in the Land Ordinance whereunder the land is vested in the Governor for the use and common benefit, direct or indirect, of the natives, is to remain unimpaired in every respect. He further states that the Government of Tanganyika will continue to oppose the policies of segregation and of the establishment of native reserves.[4] He, at least, seems to realize that the protection of the welfare of the indigenous peoples must be the primary element in any successful administration of a backward territory.

To the conclusions of the Conference of Governors, the Commission on the Closer Union of the Dependencies in Eastern and Central Africa adds the following recommendations, which, while they do not refer primarily to the mandated area, may nevertheless prove to be of importance in practical administration:

[2] White, Freda, MANDATES, chap. viii., p. 91.

[3] CONFERENCE OF GOVERNORS OF THE EAST AFRICAN DEPENDENCIES, 1926, SUMMARY OF PROCEEDINGS, p. 13. Quoted in Buell, Raymond L., THE NATIVE PROBLEM IN AFRICA, Vol. I, Appendix 13, pp. 552-553.

[4] IBID., p. 553.

Adequate areas of land should be reserved in perpetuity for native use. Such areas must be clearly demarcated—at least before there is the slightest danger of demands by settlers encroaching on what ought to be reserved for natives. Once the areas have been demarcated no substantial alienation of the land within them to non-natives must be permitted until the whole body of natives has so advanced in education as to be able to express a responsible corporate opinion. The only exceptions to this rule should be when the Secretary of State, (or the Central Authority acting on his behalf), has after proper inquiry satisfied himself that the alienation of land is to the clear and undoubted advantage of the natives.

In addition to the area set aside for native needs, the Government should reserve power to provide other areas of land in which natives who wish to settle outside native areas may acquire land by purchase.

Subject to the above, land should be definitely assigned for alienation to immigrants; but

(a) the rate at which "foreign" settlement is introduced should be carefully regulated, so as not to create undue disturbance in economic conditions;

(b) the quality of the settlers should be maintained at a high level.

Settlers once admitted should be given all the help which it is in the power of the Government to render to them.

So far as possible settled areas and native areas should be arranged in continuous blocks of a sufficient size to make it possible to build up homogeneous native and non-native units for local government.[5]

Everything possible should be done to preserve the rights of the native races in their land. An author well-known for his writings on the problem says of this:

> Keeping faith with native races, seeking first their well-being and moral advancement, is the essence of trusteeship, which, in turn, is sound statecraft, for by these means interracial confidence will be established, leading on to contentment and security, to which will be added abounding prosperity not only for the indigenous inhabitants but in full measure for the brown and white immigrant colonists. The challenge to trusteeship must be met and at all costs defeated.[6]

[5] REPORT OF THE COMMISSION ON CLOSER UNION OF THE DEPENDENCIES IN EASTERN AND CENTRAL AFRICA, p. 55.

[6] Harris, John H., "The Challenge to Trusteeship," CONTEMPORARY REVIEW, Vol. 133, p. 207.

To offset the desire of non-natives for the acquisition of a permanent title to native lands, the term of leases of residential sites in the European sector of a township must be sufficient to encourage a lessee to invest capital in the erection of permanent buildings; a period of 99 years would perhaps be advisable. If the leases were only for sites for warehouses, or for temporary houses outside a township, however, the term probably could be less. The first and most important step in the preservation of the peasant proprietor

> is the prohibition of the sale or transfer of land, without the consent of the Governor, to any person, European or other, who is not subject to the local native jurisdiction. . . . Transfers of land between natives subject to the local native jurisdiction can best be controlled by the native authority, which is the natural guardian of native custom, under the watchful security of the Resident.[7]

This question of the maintenance of native rights and welfare is fundamental. Freda White says of it:

> Prospective scarcity of labour, and actual lack of transport, hamper tropical production. Even were these difficulties overcome, there remains the question of whether the natives are willing to exploit their resources. The solution of giving the land to white planters who will use their skilled methods in supervising native labour has been largely tried. It is too easy an answer to be entirely the right one. The natives hate losing their lands, which as a rule are the property not of individuals but of the tribe. To part with them is more than a personal misfortune; it is the loss of the whole tribe and its unborn generations; and in fact it is often forbidden by native custom. Already, however, in many parts, Europeans have acquired the most fertile and well-watered land, in the best climates, and the natives are left with inferior areas, sometimes even insufficient to support them. . . . There is probably no subject which agitates the native mind today more continuously than the question of their rights in land, both collectively as tribes and individually as owners or occupiers.[8]

A final summary of the importance of a just land policy in backward areas is found in the following extract:

> The two pillars of sound colonial administration must be a liberal and humane labor regime and an equitable land

[7] Lugard, Sir Frederick D., THE DUAL MANDATE IN BRITISH TROPICAL AFRICA, chap. xiv., p. 296.

[8] *Op. cit.*, chap. viii., pp. 87-88.

system. It is generally agreed that a just land policy implies that amply sufficient areas should be reserved for the native's present and prospective needs and that the African should not be allowed to alienate this territory recklessly either to Europeans or to a privileged land-owning class. In general, the negro has no conception of private occupation of ground. According to the customary tenure in West Africa, the ownership was vaguely vested in the community, every member of which was entitled to its use. Hence, land could not be permanently alienated and the native had no intention of doing so, no matter how explicit were the words of the European title-deeds. Moreover, in a number of instances the colonizing Powers had arbitrarily granted huge tracts without regard to aboriginal rights. This was notoriously the case in the Belgian Congo and the Cameroons. Furthermore, insurrections in the German colonies led to the wholesale confiscation of native areas. Just as the Hereros of South-West Africa became in this way a landless people, so the Bakwiri in the Cameroons were deprived of the fertile territories that were subsequently turned into European cocoa plantations. The accomplished fact of dispossession in the German colonies could not be rectified, but concerning the remaining unoccupied land, the condition had been largely remedied as regards the future by a change in German policy. In the Belgian Congo also the Leopoldian policies had been discarded and the system inaugurated in 1909 was based upon the principle that the native had first title and right to the soil. Important areas were reserved for his use and he was not permitted to alienate them. Furthermore, he was allowed to harvest the fruits of all unoccupied lands. This reformed system followed that of the British colonies, in which native rights were very carefully guarded and effectively protected. As African civilization cannot develop along sound lines unless these principles are strictly adhered to, it would be highly advisable to secure an international convention embodying them. But since conditions vary so greatly in the different colonies, such an agreement might have to be of so vague a character as to be merely a pious wish.[9]

In the determination of a land policy, there should be considered the following comments made by the Commission on the Closer Union of the Dependencies in Eastern and Central Africa:

> In all the territories the Governments ought to work out in advance a programme for alienation of lands to immigrants, and in order to enable them to do so careful inquiries are necessary:

[9] Beer, George L., AFRICAN QUESTIONS AT THE PARIS PEACE CONFERENCE, Part III, chap. vii., pp. 255-257.

(a) into the amount of land which can be alienated without violating the principles of native policy;

(b) into the agricultural and other economic possibilities of such land; and

(c) into all the conditions affecting the native labour supply, so that the rate at which new settlers are introduced may be regulated accordingly.

The Government's programme for land alienation should be worked out in conjunction with its programme for railway construction, which should be elaborated in advance according to the knowledge of economic possibilities made available as a result of the inquiries referred to above, especially (b). In areas into which the railway programme provides for the early introduction of railway extensions, the land should be disposed of at prices which take into account this possibility. Some provision might possibly be made for deferring the payment of the full purchase price, or rent should, if possible, be fixed at the beginning, so that the intending settler may know the limit of his commitments.[10]

Finally, in the conclusion of this general discussion of present land problems and future policies, there should be emphasized once more, in summary form, just what this land question really is. One writer says of it:

> Now, what is the crux of this land question? Is it, in the main, that the land shall belong to the indigenes and not to foreign capitalists; or that, in the last analysis, neither the foreign capalist, nor the indigenes, but Government shall own it? To state the problem in another way, is it that the people shall be free to till the soil in their own right and sell the produce thereof to merchants abroad. . . . ; or that Government shall step in and control private rights on the assumption that parties are incapable of managing their own business?[11]

A better statement of the problem, however, is found in the following excerpt:

> The crux of the question is whether the native should be left free to expand, according to his desire and ability, or whether he should be forever restricted. After an exhaustive study of this question the majority of the Native Affairs Commission decided in favour of the last view—probably

[10] REPORT OF THE COMMISSION ON THE CLOSER UNION OF THE DEPENDENCIES IN EASTERN AND CENTRAL AFRICA, pp. 55-56.

[11] Hayford, Casely, THE TRUTH ABOUT THE WEST AFRICAN LAND QUESTION, chap. i., p. 2.

> that of a considerable number of Africanders—and are therefore in the anomalous position of advising a general extension of the native's political power on the one hand and a diminution of his individual privileges on the other. As the native has never had the franchise, except in a restricted sense in Cape Colony, he would hardly miss it. But he has had land from time immemorial, not on individual tenure but still communally, with every power of expansion if he and his tribe desired, and in certain sections of South Africa, notably the Cape Colony, he has been able under British rule to acquire land freely. The truest welfare of the native races is bound up with the land, and the best hope of South Africa is to make them a successful agricultural and pastoral people and to attach them to the soil.[12]

Such is the general land problem which, in all probability, will continue to exist in exactly the same phases, though perhaps not to the same extent, in future years. The subjects of tenure, alienation, and segregation will always be topics of importance to the student of the question. To be successful, the policies pursued by the Mandatory Powers should make provision for the encouragement of indigenous production, the rights and interests of the natives being ever paramount. If given a sound administration of the land problem, the mandated areas should attain to economic stability, domestic peace, and political quietude.

## 3. THE VALUE OF THE MANDATES SYSTEM

There is no more proper way of concluding this discussion of land problems and policies in mandated areas than by a brief statement as to the value of the mandates system. The administration and development of backward territories is a work which no one nation can perform adequately, but one which all nations can unite, as many of them have done in the League of Nations, to do for their mutual benefit.

> The mandatory work of the League will be among its most important and certainly its least open to attack. The mandatory principle is one of the best guarantees of a new spirit in international relations, for it substitutes the principle of responsibility to a common world morality for that of purely selfish exploitation. It is not that the world has become suddenly purged of all its graspings; far from it indeed. It means simply that a method has now been worked

[12] Colquhoun, A. R., THE AFRICANDER LAND, Part I, chap. vi., pp. 95-96.

out for the execution of a principle which everyone is glad to accept in theory.[13]

Although the force of international criticism is the only weapon which the League can wield against the Mandatory Powers, it would be a bold nation which would refuse, under such circumstances, to bring itself in line with enlightened practice. On the other hand, the real merit of the mandates system is found in the hope that

> under the urge of publicity the pride of the various nations may be stimulated to a new kind of competition, a competition not to see how much they can get out of their wards, but rather to see how much they can put into them. The French might well be disappointed if the British made a better showing in developing one of their colonies, or the South Africans come to vie with the Australians in the work given them.
>
> And if such a lift in standards occurs in the territories under mandate is it conceivable that it will be without effect on the vast colonial world not so controlled? If the former German Cameroons, for instance, are freed from many of the existing colonial evils, would it be possible for the old-line colonies right alongside to persist in these abuses? Hardly, indeed, for after all, good is contagious in this world of ours, and the natural tendency is for people to lift themselves higher and still higher all the time.[14]

There can be no doubt that administration under the mandates system, with its many innovations, will be exceedingly interesting to watch. "Between them, the 'colonial' nations will probably try every method of government; and the progress of the experiments will be recorded and checked annually at Geneva."[15] Already the manner in which the land problem is being administered in these mandated areas, when compared with policies under the rule of the British South Africa Company, for example, indicates that the mandates system is in truth a new development which is to be of inestimable value in the advancement of native welfare.

In conclusion, it should be remembered that
Africa is today the land of a miraculous future, just as four hundred years ago, the vast tract between Ponce de Leon's

[13] Sweetser, Arthur, THE LEAGUE OF NATIONS AT WORK, chap. ix., p. 129.
[14] IBID., pp. 132-133.
[15] White, Freda, *op. cit.*, chap. viii., p. 91.

fountain of youth and Coronado's golden strand was a mystery-shrouded wilderness, hiding a magical promise of things to come.[16]

In order that the native inhabitants of Africa may have the opportunity in that future to develop along the lines most conducive to the promotion of their social and political welfare and their economic prosperity, it is of the utmost importance that the peoples of the civilized world interest themselves in the question of backward areas, and that they demand at all times that the mandated territories, at least, shall be administered with the protection and expansion of native rights and property ever the fundamental consideration.

[16] "Germany's African Colonies All Lost," CURRENT HISTORY, Vol. 7, Part II, p. 114.

# APPENDICES

# APPENDIX I

## AUTHORIZATION FOR THE ESTABLISHMENT OF THE MANDATES SYSTEM

### THE COVENANT OF THE LEAGUE OF NATIONS,

### ARTICLE XXII:

1. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

2. The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

3. The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

4. Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

5. Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

6. There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity of the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

7. In every case of Mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

8. The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

9. A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

# APPENDIX II

## A TYPICAL "B" MANDATE

### BRITISH MANDATE FOR TOGOLAND[1]

The Council of the League of Nations:

Whereas by Article 119 of the Treaty of Peace with Germany signed at Versailles on June 28th, 1919, Germany renounced in favour of the Principal Allied and Associated Powers all her rights over her oversea possessions, including therein Togoland; and

Whereas the Governments of the Principal Allied and Associated Powers agreed that the Governments of France and Great Britain should make a joint recommendation to the League of Nations as to the future of the said territory; and

Whereas the Governments of France and Great Britain have made a joint recommendation to the Council of the League of Nations that a mandate to administer, in accordance with Article XXII of the Covenant of the League of Nations, that part of Togoland lying to the west of the line agreed upon in the Declaration of July 10th, 1919, referred to in Article 1, should be conferred upon His Britannic Majesty; and

Whereas the Governments of France and Great Britain have proposed that the mandate should be formulated in the following terms; and

Whereas His Britannic Majesty has agreed to accept the mandate in respect of the said territory, and has undertaken to exercise it on behalf of the League of Nations in accordance with the following provisions;

Confirming the said Mandate, defines its terms as follows:

ARTICLE 1.

The territory for which a mandate is conferred upon His Britannic Majesty comprises that part of Togoland which lies to the west of the line laid down in the Declaration signed on July 10th, 1919, of which a copy is annexed hereto.

This line may, however, be slightly modified by mutual agreement between His Britannic Majesty's Government and the Government of the French Republic where an examination of the localities shows that it is undesirable, either in the interests of the inhabitants or by reason of any inaccuracies in the map annexed to the Declaration, to adhere strictly to the line laid down therein.

The delimitation on the spot of this line shall be carried out in accordance with the provisions of the said Declaration.

The final report of the Mixed Commission shall give the exact description of the boundary line as traced on the spot; maps signed by the Commissioners shall be annexed to the report. This report with its annexes shall be drawn up in triplicate; one of these shall be deposited in the archives of the League of Nations, one shall be kept by His Britannic Majesty's Government, and one by the Government of the French Republic.

ARTICLE 2.

The Mandatory shall be responsible for the peace, order and good government of the territory, and for the promotion to the utmost of the material and moral well-being and the social progress of its inhabitants.

[1] C. 449 (1). b. M. 345 (b). 1922. VI.

ARTICLE 3.

The Mandatory shall not establish in the territory any military or naval bases, nor erect any fortifications, nor organize any native military force except for local police purposes and for the defence of the territory.

ARTICLE 4.

The Mandatory:

(1) shall provide for the eventual emancipation of all slaves, and for as speedy an elimination of domestic and other slavery as social conditions will allow;

(2) shall suppress all forms of slave trade;

(3) shall prohibit all forms of forced or compulsory labour, except for essential public works and services, and then only in return for adequate remuneration;

(4) shall protect the natives from abuse and measures of fraud and force by the careful supervision of labour contracts and the recruiting of labour;

(5) shall exercise a strict control over the traffic in arms and ammunition and the sale of spirituous liquors.

ARTICLE 5.

In the framing of laws relating to the holding or transfer of land, the Mandatory shall take into consideration native laws and customs, and shall respect the rights and safeguard the interests of the native population.

No native land may be transferred, except between natives, without the previous consent of the public authorities, and no real rights over native land in favour of non-natives may be created except with the same consent.

The Mandatory shall promulgate strict regulations against usury.

ARTICLE 6.

The Mandatory shall secure to all nationals of States Members of the League of Nations the same rights as are enjoyed in the territory by his own nationals in respect of entry into and residence in the territory, the protection afforded to their use and property, and the acquisition of property, moveable and immoveable, and the exercise of their profession or trade, subject only to the requirements of public order, and on condition of compliance with the local law.

Further, the Mandatory shall ensure to all nationals of States Members of the League of Nations, on the same footing as to his own nationals, freedom of transit and navigation, and complete economic, commercial and industrial equality; except that the Mandatory shall be free to organise essential public works and services on such terms and conditions as he thinks just.

Concessions for the development of the natural resources of the territory shall be granted by the Mandatory without distinction on grounds of nationality between the nationals of all States Members of the League of Nations, but on such conditions as will maintain intact the authority of the local Government.

Concessions having the character of a general monopoly shall not be granted. This provision does not affect the right of the Mandatory to create monopolies of a purely fiscal character in the interest of the territory under mandate and in order to provide the territory with fiscal resources which seem best suited to the local requirements; or, in certain cases, to carry out the development of natural resources, either directly by the State or by a controlled agency, provided that there shall result therefrom no monopoly of the natural resources, for the benefit of the Mandatory and his nationals directly or indirectly, nor any preferential advantage which shall

be inconsistent with the economic, commercial and industrial equality hereinbefore guaranteed.

The rights conferred by this Article extend equally to companies and associations organized in accordance with the law of any of the Members of the League of Nations, subject only to the requirements of public order, and on condition of compliance with the local law.

ARTICLE 7.

The Mandatory shall ensure in the territory complete freedom of conscience and the free exercise of all forms of worship which are consonant with public order and morality; missionaries who are nationals of States Members of the League of Nations shall be free to enter the territory and to travel and reside therein, to acquire and possess property, to erect religious buildings and to open schools throughout the territory; it being understood, however, that the Mandatory shall have the right to exercise such control as may be necessary for the maintenance of public order and good government, and to take all measures required for such control.

ARTICLE 8.

The Mandatory shall apply to the territory any general international conventions applicable to his contiguous territory.

ARTICLE 9.

The Mandatory shall have full powers of administration and legislation in the area subject to the mandate. This area shall be administered in accordance with the laws of the Mandatory as an integral part of his territory and subject to the above provisions.

The Mandatory shall therefore be at liberty to apply his laws to the territory subject to the mandate with such modifications as may be required by local conditions, and to constitute the territory into a customs, fiscal or administrative union or federation with the adjacent territories under his sovereignty or control, provided always that the measures adopted to that end do not infringe the provisions of this mandate.

ARTICLE 10.

The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council, containing full information concerning the measures taken to apply the provisions of this mandate.

ARTICLE 11.

The consent of the Council of the League of Nations is required for any modification of the terms of this mandate.

ARTICLE 12.

The Mandatory agrees that if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article XIV of the Covenant of the League of Nations.

The present instrument shall be deposited in original in the archives of the League of Nations. Certified copies shall be forwarded by the Secretary-General of the League of Nations to all Members of the League.

Done at London, the twentieth day of July, one thousand nine hundred and twenty-two.

# APPENDIX III

## A TYPICAL "C" MANDATE

### THE MANDATE FOR GERMAN SOUTH-WEST AFRICA[1]

The Council of the League of Nations:

Whereas by Article 119 of the Treaty of Peace with Germany signed at Versailles on June 28th, 1919, Germany renounced in favour of the Principal Allied and Associated Powers all her rights over her oversea possessions, including therein German South-West Africa; and

Whereas the Principal Allied and Associated Powers agreed that, in accordance with Article 22, Part I, (Covenant of the League of Nations), of the said Treaty, a Mandate should be conferred upon His Britannic Majesty to be exercised on his behalf by the Government of the Union of South Africa to administer the territory afore-mentioned, and have proposed that the Mandate should be formulated in the following terms; and

Whereas His Britannic Majesty for and on behalf of the Government of the Union of South Africa, has agreed to accept the Mandate in respect of the said territory and has undertaken to exercise it on behalf of the League of Nations in accordance with the following provisions; and

Whereas, by the afore-mentioned Article 22, paragraph 8, it is provided that the degree of authority, control or administration to be exercised by the Mandatory not having been previously agreed upon by the Members of the League, shall be explicitly defined by the Council of the League of Nations:

Confirming the said Mandate, defines its term as follows:

ARTICLE 1.

The territory over which a Mandate is conferred upon His Britannic Majesty for and on behalf of the Government of the Union of South Africa (hereinafter called the Mandatory) comprises the territory which formerly constituted the German Protectorate of South-West Africa.

ARTICLE 2.

The Mandatory shall have full power of administration and legislation over the territory subject to the present Mandate as an integral portion of the Union of South Africa, and may apply the laws of the Union of South Africa to the territory, subject to such local modifications as circumstances may require.

The Mandatory shall promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory subject to the present Mandate.

ARTICLE 3.

The Mandatory shall see that the slave trade is prohibited, and that no forced labour is permitted except for essential public works and services, and then only for adequate remuneration.

The Mandatory shall also see that the traffic in arms and ammunition is controlled in accordance with principles analogous to those laid down in the Convention relating to the control of the arms traffic, signed on September 10th, 1919, or in any convention amending the same.

[1] 21/31/14. D.

The supply of intoxicating spirits and beverages to the natives shall be prohibited.

ARTICLE 4.

The military training of the natives, otherwise than for purposes of internal police and the local defence of the territory, shall be prohibited. Furthermore, no military or naval bases shall be established or fortifications erected in the territory.

ARTICLE 5.

Subject to the provisions of any local law for the maintenance of public order and public morals, the Mandatory shall ensure in the territory freedom of conscience and the free exercise of all forms of worship, and shall allow all missionaries, nationals of any State Member of the League of Nations, to enter into, travel and reside in the territory for the purpose of prosecuting their calling.

ARTICLE 6.

The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council, containing full information with regard to the territory, and indicating the measures taken to carry out the obligations assumed under Articles 2, 3, 4 and 5.

ARTICLE 7.

The consent of the Council of the League of Nations is required for any modification of the terms of the present mandate.

The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the Mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations.

The present Declaration shall be deposited in the archives of the League of Nations. Certified copies shall be forwarded by the Secretary-General of the League of Nations to all Powers Signatories of the Treaty of Peace with Germany.

Made at Geneva the 17th day of December, 1920.

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